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In the Supreme Court of the United States

OCTOBER TERM, 1942.

No. 988.....

**THE CLEVELAND TRUST COMPANY AND THE
CENTRAL NATIONAL BANK OF CLEVELAND, OHIO,**

Petitioners,

VERSUS

MICHAEL GEORGE STOLLER,

Respondent.

PETITION FOR WRIT OF CERTIORARI

**To the United States Circuit Court of Appeals
for the Sixth Circuit, and**

BRIEF OF PETITIONERS.

**KERNS WRIGHT,
Van Wert, Ohio,**

**LORIN L. HOGAN,
Bryan, Ohio,**

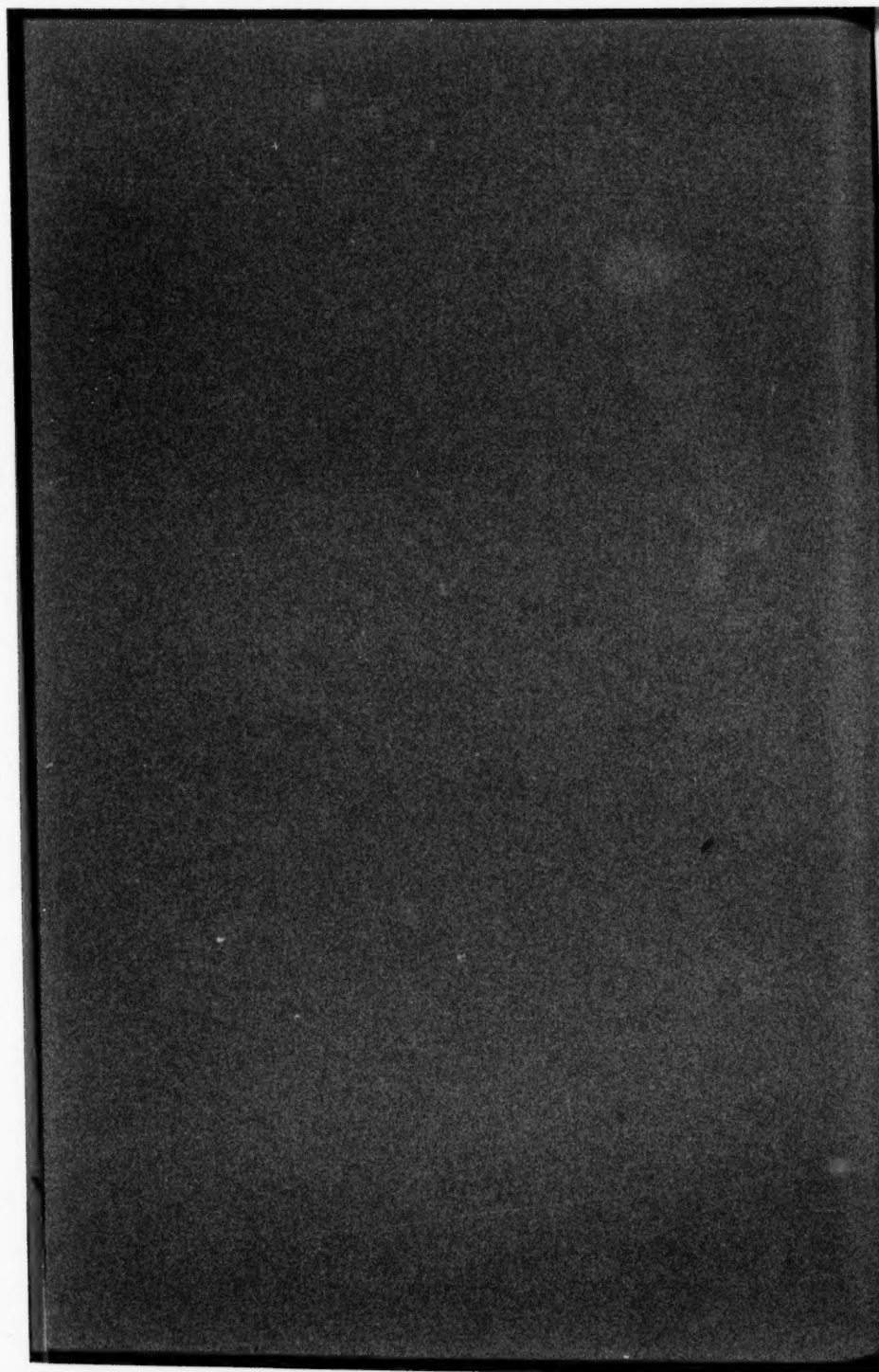
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PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals
for the Sixth Circuit.

*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:*

STATEMENT OF MATTER INVOLVED.

This case arises under Section 75 of the Bankruptcy Act (11 U. S. C. A. Sec. 203) relating to Agricultural Compositions and Extensions and involves the construction of 75(r) defining the term "farmer" within the purview of the Act.

The suit originated in the District Court for the Northern District of Ohio within one week after Respondent filed his petition as a farmer-debtor for a composition and extension of his debts. The Petitioners moved to dismiss his petition on the ground that Respondent was not a farmer as defined by the Act.

The District Judge referred the matter to the Supervising Conciliation Commissioner for the District as a Special Master to take testimony and report his findings.

The Master found and reported in favor of the Respondent (R. 24) but the District Judge sustained the objections of the Petitioners to such report and granted Respondent leave to file an amended petition under 4(a) of the Bankruptcy Act under penalty of dismissal (R. 190).

The Respondent did not elect to file an amended petition but availed himself of an appeal to the United States Circuit Court of Appeals for the Sixth Circuit.

The Circuit Court reversed the order of the District Court, remanding the cause for further proceedings in conformity to its opinion (*Stoller vs. Cleveland Trust Co.*, 133 Fed. (2d) 180) which decision the Petitioners now respectfully petition for review and determination.

This petition for a Writ of Certiorari is filed within ninety days from the entry of the Judgment of the Circuit Court and by reason of the additional jurisdiction provided in Section 73 (11 U. S. C. A. 201) and Section 25 (11 U. S. C. A. 48) of the Bankruptcy Act, and under the general powers granted by statute (28 U. S. C. A. 377) this Court may entertain this motion.

QUESTIONS PRESENTED.

This case presents several interesting questions of importance relating to the interpretation of Section 75(r) of the Bankruptcy Act, and which have not been considered by this Court.

While the issue is whether Respondent is a "farmer" within the meaning of the Act, to conclude as to such issue, the interpretation of the phrase, "primarily, bona fide, personally engaged" within the first branch of the definition and the phrase, "principal part of whose income" in the second branch of the definition is involved.

It is contended that the Circuit Court erred in the following respects:

- (a) In finding that the net income of the Respondent, and not his gross income, was the proper

basis for determining "income" within the meaning of the definition.

(b) In selecting as the period of time for such computation, a one year period ending nine months prior to the filing of Respondent's petition.

(c) In failing to consider and apply the statutory requirement of determining whether Respondent is "primarily" engaged in farming operations.

(d) In failing to consider and apply the statutory requirement of determining whether the Respondent is "bona fide" engaged in farming operations.

(e) In failing to consider the conduct of the Respondent in respect to representing himself to be primarily engaged in a business enterprise, fraudulently soliciting and obtaining credit upon such representations and to find and determine that this conduct was such as to estop him from enjoying the benefits of the Act.

These errors of the Circuit Court present the following questions:

(a) Should the term "income" be construed as meaning "net" income or "gross" income?

(b) In determining "income" what period of time prior to the filing of the debtor's petition should be considered?

(c) Should the relative volume of a business enterprise and the farming operations of a debtor and his activities in connection therewith be considered in determining whether the debtor is "primarily" engaged in farming operations?

(d) Should the relative volume of the business enterprise and farming operations of a debtor and his activities in connection therewith, be considered in

determining whether the debtor is "bona fide" engaged in farming operations?

(e) May the conduct of a farmer-debtor in respect to representing himself to be primarily engaged in a business enterprise and fraudulently soliciting and obtaining credit upon such conduct and misrepresentations, be such as to estop him from enjoying the benefits of the Act?

REASONS RELIED UPON.

We believe the decision of the Circuit Court in this case has added to the general confusion in defining the term "farmer" within the meaning of the Act.

1. In concluding the Respondent was a "farmer" by reason of his income, the Circuit Court considered "net" income as the proper yardstick upon which to base its determination. In the cases of *Baxter vs. Savings Bank*, 92 Fed. (2d) 404; *In re Day*, 10 Fed. Supp. 229; *In re Lindsay*, 41 Fed. Supp. 948; *In re Knight*, 9 Fed. Supp. 502; *In re Hilliker*, 9 Fed. Supp. 948; *Beamesderfer vs. First National Bank*, 91 Fed. (2d) 491, it would appear that "gross" income is the factor to be considered, and in this respect the decision appears to be in conflict with the decisions of other Circuit Courts of Appeal.

2. In determining the period of time prior to the filing of the debtor's petition for considering income, the Circuit Court seems to conclude that a year ending nine months preceding the filing of the Respondent's petition, is the proper period and time upon which to predicate a conclusion, and in this respect, has decided an important phase of the Act which has not been, but should be, settled by this Court.

3. In determining the Respondent was a "farmer," the Circuit Court found that the volume of his business enterprise and farming operations amounted to approxi-

mately \$260,000.00 for the period in question, of which farming activities according to Respondent (R. 143) amounted to \$35,163.35, or about one-seventh of his total income, but the Court seemed to conclude that as the debtor had been born upon a farm, that he now resided on a farm and devoted some time thereto, the decision of this Court in *First National Bank vs. Beach*, 301 U. S. 435, would hold that "he remained a farmer," in which respect the decision of the Circuit Court is probably in conflict with the decision of this Court.

4. In determining whether the Respondent is a "farmer" the Circuit Court did not consider, find or determine in which of the two enterprises he was "primarily" engaged, and whether his farming operations or his business enterprise was his first and basic concern. In this respect the Circuit Court is in error and the importance of such an analysis and determination in each case should be emphasized and established by this Court.

5. In determining the Respondent is a "farmer" the Circuit Court did not consider, find or determine the debtor was "bona fide" engaged in farming. In this respect the Court is in error and the importance of such an analysis and determination in each case should be emphasized and established by this Court.

6. In determining the Respondent is a "farmer" the Circuit Court did not consider, find and determine whether the conduct of the debtor, in respect to misrepresentations, fraud and similar conduct in connection with his business venture and the securing of credit from the petitioners and others, was such as would estop him from enjoying the benefits of the Act, in which respect the Court was in error as to an important question of Federal law which has not been, but should be settled, by this Court.

7. A decision of this Court in further defining, interpreting and construing Section 75(r) in reference to the

above matters, would clarify the situation and otherwise expedite and simplify the administration of the Bankruptcy Act, would be of great and public interest, particularly to those engaged in agriculture, business and finance, and would tend to renew confidence and to re-establish those business relations in which fear now obtains and undue caution prevails.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding that Court to certify and to send to this Court for its review and determination on a day certain to be therein named, a transcript of the record and proceedings herein and that the decree of the United States Circuit Court of Appeals for the Sixth Circuit be reversed by this Honorable Court and your petitioners have such other and further relief in the premises as to this Honorable Court may seem meet and just.

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BRIEF OF PETITIONERS.

GROUND'S UPON WHICH JURISDICTION IS INVOKED.

This case arises under Section 75(r) of the Bankruptcy Act (11 U. S. C. A. Sec. 203), which provides as follows:

“For the purposes of this section and section 4(b) the term ‘farmer’ includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur.”

The suit originated in the District Court for the Northern District of Ohio within one week after Respondent filed his petition as a farmer-debtor for a composition and extension of his debts. The Petitioners moved to dis-

miss his petition on the ground that Respondent was not a farmer as defined by the Act.

The District Judge referred the matter to the Supervising Conciliation Commissioner for the District as a Special Master to take testimony and report his findings. The Master found and reported in favor of the Respondent (R. 24) but the District Judge sustained the objections of the Petitioners to such report and granted Respondent leave to file an amended petition under Section 4(a) of the Bankruptcy Act under penalty of dismissal (R. 190).

The Respondent did not elect to file an amended petition but availed himself of an appeal to the United States Circuit Court of Appeals for the Sixth Circuit.

The Circuit Court reversed the order of the District Court remanding the cause for further proceedings in conformity to its opinion, *Stoller vs. Cleveland Trust Co.*, 133 Fed. (2d) 180, which decision the Petitioners now respectfully petition for review and determination.

This petition for a Writ of Certiorari is filed within ninety days from the entry of the judgment of the Circuit Court and by reason of the additional jurisdiction provided in Section 73 (11 U. S. C. A. 201) and Section 25 (11 U. S. C. A. 48) of the Bankruptcy Act, and under the general powers granted by statute (28 U. S. C. A. 377) this Court may entertain this motion.

OPINION OF UNITED STATES DISTRICT COURT.

KLOEB, District Judge.

I am of the opinion that the conclusion of the special master that the farmer debtor was primarily bona fide personally a farmer and that his principal income was derived from that source ought to be over-ruled and that the objections of the movants to the report of the special master ought to be sustained.

Each case involving the question of whether a debtor in bankruptcy was engaged in farming, so as to entitle him to the benefits that accrue to a farmer under the provisions of Sec. 75 of the Bankruptcy Act, should stand on its own bottom and be determined from the facts and from the record. *First Nat. Bank v. Beach*, 301 U. S. 435, 57 S. Ct. 801, 81 L. Ed. 1206 (1937).

I have concluded that Michael Stoller was basically, fundamentally and primarily engaged in the wholesale and retail seed business; that his interests lay there; that his energies and attention were primarily devoted there; and that instead of being personally engaged in the business of farming he was personally engaged in the seed business. I am further of the opinion from the record that the principal income that accrued to Michael Stoller during a period of years prior to the filing of his petition in bankruptcy was derived from the seed business, and I am further convinced that the substantial portion of his indebtedness that brought him to the bar of the bankruptcy court was incurred in the operation of that seed business. *Beamesderfer v. First Nat. Bank & Trust Co.* (C. C. A. 3d, 1937), 91 F. (2d) 491.

It is apparent from the record that the farmer debtor exercised supervision over the farm operations in that he was in the habit of giving directions to his foreman and workmen on the farm, especially in the mornings before proceeding to the conduct of his seed business. But supervision or property management is not sufficient to entitle one to the benefits of this section. *Baxter v. Savings Bank of Utica* (C. C. A. 5th, 1937), 92 F. (2d) 404.

It is also apparent that in the off season when his time and attention was not wholly concerned with the seed business he devoted more time to his farm, but there is very little in the record to indicate that he was personally engaged in farming or that he was basically and fundamentally a farmer and that this industry was his primary vocation. *In re Day* (D. C. Ill. 1935), 10 F. Supp. 229.

Objections to the report of the special master are sustained, Counsel may prepare an order in accordance with the foregoing memorandum, including therein a provision granting to the debtor the right to file an amended petition to bring this proceeding within the provisions of Sec. 4a of the Bankruptcy Act, such amended petition to be filed within twenty days of the date of entry of the said order. In default of the filing of such amended petition, an order may enter sustaining the motion of the secured creditors to dismiss the debtor's petition.

FRANK L. KLOEB,

U. S. District Judge.

October 11, 1941.

**OPINION OF UNITED STATES
CIRCUIT COURT OF APPEALS.**

MARTIN, *Circuit Judge*.

One week after appellant had filed a petition as a farmer-debtor, for the composition or extension of his debts under Section 75 of the Bankruptcy Act, 11 U. S. C. A., § 203, the appellees, as creditors, moved to dismiss the petition upon the ground that appellant is not a farmer as defined in the Act. The district judge referred the motion to the supervising conciliation commissioner for the district, as special master to take testimony and to report his findings of fact and conclusions of law.

The master reported that the farming operations of appellant had resulted in a net profit, and the conduct of his seed business in a net loss; and that his financial difficulties had been caused by the operation of his seed business. The master reported, as findings of fact, that the principal part of the income of appellant for the year preceding the filing of his petition had been derived from products of the soil and from livestock and livestock products in unmanufactured state; and that the appellant was primarily bona fide

personally engaged in the production of products of the soil, livestock and livestock products in unmanufactured state.

The district judge sustained objections of the appellee-creditors to the report of the special master, and granted leave to the appellant-debtor to file, within twenty days, an amended petition under Section 4(a) of the Bankruptcy Act, 11 U. S. C. A., § 22(a), under penalty of dismissal of the debtor's petition upon his failure to do so. Appellant did not elect to file an amended petition; his original petition was accordingly dismissed at his cost; and he has prosecuted an appeal to this court.

In a memorandum opinion, the district judge concluded that appellant "was basically, fundamentally and primarily engaged in the wholesale and retail seed business; that his interests lay there; that his energies and attention were primarily devoted there; and that instead of being personally engaged in the business of farming he was personally engaged in the seed business"; that his principal income for a period of years prior to the filing of his petition had been derived from the seed business; and that "the substantial portion of his indebtedness that brought him to the bar of the bankruptcy court was incurred in the operation of that seed business." Citing *Beamesderfer v. First National Bank and Trust Co.*, 3 Cir., 91 F. 2d 491.

Supervision of farming operations, through instructions by appellant to his foreman and workmen on the farm before he proceeded to the conduct of his seed business in the morning, was deemed by the district judge insufficient to constitute appellant a farmer-debtor entitled to the full benefits of the Act. Citing *Baxter v. Savings Bank of Utica*, 5 Cir., 92 F. 2d 404. The observation was made that, in the off-season when his time and attention were not wholly concerned with the seed business, appellant devoted more time to his farm; but that "there is very little in the record to indicate that he was personally engaged in

farming or that he was basically and fundamentally a farmer," or that farming was his primary vocation (Citing *In re Day*, D. C., 10 F. Supp. 229).

[1] From study of the record, we cannot concur in the conclusion of the district judge that appellant was not a farmer, as defined in Section 75, sub. r, of the Bankruptcy Act, 11 U. S. C. A., 203, sub. r, but are in accord with the findings and conclusions of the master.

The authorities cited by the district court present facts far afield from those recorded in the instant case. *Beamesderfer v. First National Bank & Trust Co.*, *supra*, disclosed a situation where the petitioner did not live on his farm, but had rented it out. The farm had not been cultivated for five years, but had been used only for pasture. The petitioner owned a tobacco warehouse in the town of his residence, and his occupation for fifteen years had been buying and selling leaf tobacco. Practically all of his income had been derived from the tobacco business. He was properly adjudged not to be a farmer entitled to the benefit of the Agricultural Composition and Extension Act.

Baxter v. Savings Bank of Utica, N. Y., *supra*, is of doubtful authority, in the light of the opinion of the Supreme Court in *John Hancock Mutual Life Insurance Co. v. Bartels*, 308 U. S. 180, 60 S. Ct. 221, 84 L. Ed. 176; but, however this may be, its factual situation bears no relevant resemblance to the instant justiciable controversy. The petitioner, Baxter, who was denied the benefits of a farmer-debtor status, was a Utica, New York, lawyer, who, eight months before filing his petition, had given up his law practice and, because of ill health, moved to Georgia, to a farm which he had previously acquired there. During residence on his farm, he merely superintended farming operations. The Court of Appeals probably took judicial notice that the new arrival, as a farmer, was a good lawyer.

In re Day, *supra*, was a case where the petitioner held not to be a farmer was a practicing civil engineer, and also

superintendent and county surveyor, who owned but did not live upon a farm which he rented to a tenant who occupied and cultivated it. The civil engineer devoted his time almost exclusively to the practice of his profession, and derived his income about equally from his profession and his farm.

In the instant case, the appellant farmer-debtor, now 42 years old, has lived in Paulding County, Ohio, for about 29 years; during which time, he has always resided on a farm—first on his father's and, from the age of 22, on his own farm. The first farm owned by him consisted of 160 acres. He steadily increased his farming activities until, in 1936 and 1937, he was operating 1785 acres of farm land.

The appellant regularly did a considerable portion of his farm work and personally directed the operations of farms owned or rented by him. He threshed his own crops and those of some of his neighbors and, as an outgrowth of these combined operations, he started a small seed business, the gross volume of which was some two or three thousand dollars for the first year. In the course of sixteen years, his seed business reached a peak of over \$350,000 in gross volume. The seed business exacted increasing demands upon his time, until he devoted somewhat more than half of his working hours to its care. During the rush season, the major portion of his time was devoted to this seed business, and during the slack season his farming operations were paramount in time consumption. At no time did he abandon active duties on his farm. He saw to the upkeep of improvements and the maintenance of the fertility of the soil which he farmed and, as the master put it, "followed all the practices of good husbandry."

There is controversy concerning his customary daily movements from his farm to the situs of his seed business in Paulding, Ohio; but it appears that his day began at the usual early hour for farmers, and that he constantly

performed some regular farm routine, gave instructions for farm operations, and prepared and kept records of the same; more adequately, indeed, than he kept the books of his seed business. However varied his activities, it is apparent from the record that the industrious appellant applied a most substantial portion of his time to the work of a "dirt farmer." He plowed, planted and husked corn; sowed wheat and oats; drilled and harvested beets; mowed alfalfa hay and clover; and ran a tractor and a combine, threshing machine, binder and reaper. He did most of the farm repair work and gave attention to drainage and tiling problems. The usual custom of appellant, after completing his most pressing farm work and instructing the farm hands, was to proceed to his seed house between eleven and twelve o'clock, and to return around four or five o'clock in the afternoon for the resumption of his part of planting, plowing, or whatever might be the order of the day upon the farm.

The seed business is seasonal, and requires heavy buying during harvest time and considerable selling during the early spring. Appellant made buying and selling trips to other states; maintained a business office and warehouse facilities for storage, and equipment for cleaning and grading seeds. He employed one man in his seed business virtually all the time; and, at the peak period, acquired the services of three or four men, in the main using the same men whom he employed on his farms. Appellant's total gross seed sales, including the produce of his farms, totaled the approximate amount of \$260,000 from May 15, 1939, to May 15, 1940. A Certified Public Accountant testified that the records of the seed business were insufficient to make possible an audit; but it is manifest that the financial straits of appellant were directly resultant from the operation of his seed business.

On the record before this Court, it is not possible to determine accurately the source of appellant's income.

Apparently, he kept his farm and his seed business records as a unit. He testified that the income statements which he prepared for the creditor banks were based on his combined operations. His testimony indicates that the major portion of his net income was derived from farming operations, but this testimony is neither established nor disproved by his own records. His reports to the Department of Agriculture indicate that his farming operations were profitable; and the fact that the preponderance of his debts were weighted upon him from the seed business is corroborative of his assertion that the principal part of his income was derived from farming.

The Act of Congress invoked by appellant must be liberally construed to give the debtor the full measure of relief afforded by Congress, "lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act." *Wright v. Union Central Life Insurance Co.*, 311 U. S. 273, 279, 61 S. Ct. 196, 200, 85 L. Ed. 184. See, also, *John Hancock Mutual Life Insurance Co. v. Bartels*, 308 U. S. 180, 60 S. Ct. 221, 84 L. Ed. 176; *Kalb v. Feuerstein*, 308 U. S. 433, 60 S. Ct. 343, 84 L. Ed. 370; *Chapman v. Federal Land Bank of Louisville, Ky.*, 6 Cir., 117 F. 2d 321, 325.

The Supreme Court, in *First National Bank v. Beach*, 301 U. S. 435, 438, 439, 57 S. Ct. 801, 803, 81 L. Ed. 1206, has declared that, in determining in every case of this character whether the petitioner is a farmer because "personally bona fide engaged primarily in farming operations" or because "the principal part of his income was derived from farming operations," the totality of the facts must be considered and appraised. The Supreme Court would not attempt to fix the meaning of either of the two branches of the definition considered in the abstract, saying that the two are not equivalents but are used by way of contrast. The words "primarily engaged" in the first branch of the definition, and the words "income derived from farming

operations" in the second, were said not to constitute terms of art. Mr. Justice Cardozo wrote: "A farmer remains a farmer, just as a lawyer remains a lawyer, though the returns of his investments, while not enough to keep him going, are larger, none the less, than the profits of his labor. * * * We emphasize the fact afresh that the words of the statute to which meaning is to be given are not phrases of art with a changeless connotation. They have a color and a content that may vary with the setting. [Citing cases.] In the setting of this enterprise, the totality of its circumstances, the roots of the respondent's income go down into the soil."

So, in the setting of the case here for decision and the totality of its circumstances, the roots of appellant's income would seem to go down into the soil. He is, therefore, entitled in full measure to the relief provided by the Act of Congress of May 15, 1935, c. 114, Sec. 3, 49 Stat. 246, 11 U. S. C. A., § 203, sub. r.

The order of the district court is reversed and the cause is remanded for proceedings in conformity with this opinion, so as to grant appropriate relief pursuant to the petition of appellant as a farmer-debtor.

STATEMENT OF THE CASE.

The Circuit Court has well summarized the evidence of those phases of the case which it considered and determined and we will submit only the evidence relative to those phases which the Circuit Court overlooked and failed to appraise, and which we think are of paramount importance.

The record discloses that Respondent is 42 years of age, that he was born and raised on a farm, and has resided on a farm in Paulding County all his life (R. 86). In the past he was active in agricultural pursuits, overseeing as many as 1,785 acres in 1936 (R. 132), but having built up and established his wholesale and retail

seed business, he rapidly gave up his farming supervision, reducing his activities at the time of filing his petition, to the "home farm," of 435 acres, with large and pretentious buildings, located a few miles south of Paulding on U. S. Route 127, on which he resides, also one forty and one eighty acre tract. He employs four, five or six men on this farm, who were under control of his brother, John Stoller, as foreman, who also resides on this farm (R. 94).

The activities of Respondent, in this respect, is limited and restricted, as he himself so well expresses it, to "landlord work" (R. 133), that is, to the drainage problems, repairs on buildings, instructions to farm hands before leaving for his office in the mornings, and sometimes personal assistance in an emergency or during the harvest season, which is the slack time in the seed business (R. 94).

As to his wholesale seed business, he speaks with pardonable pride of his accomplishments. He explained he had commenced about sixteen years ago with a volume of \$2,000.00 or \$3,000.00 a year, and built it up from this modest beginning to as high as \$356,726.34 in 1937 (R. 86), and to at least \$227,888.72 (Bank's Exhibit 11) for the year preceding the filing of his petition.

In describing his business he stated that it consisted of the buying of all forms of field seeds, processing, packaging and selling of the same, both wholesale and retail. His wholesale business was either in carload or truckload lots. Purchases were made in the West, particularly in the Dakotas, Iowa, Minnesota, and Montana (R. 118), with imports from Roumania (R. 87), processed in Paulding, Ohio, and sold mostly in the East (R. 87). His retail business was confined principally to an area of three hundred miles adjacent to the village of Paulding, Ohio (R. 87).

In connection with his business he maintained an extensive mailing list, in fact, it was so extensive that he

used a special franking privilege (R. 87). He advertised widely in farm papers, circulars and price cards (Bank's Exhibits 2, 3 and 4). He usually carried an inventory of from 10,000 to 50,000 bushels of seed, and in addition to seeds, he dealt in Inoculation Bacteria, Disinfectants, Fertilizers and Bags (R. 88). In addition to his business of wholesaling and retailing seeds, he also cleaned and processed seed for all of his customers (R. 211-212).

All of his business was conducted at the Stoller Seed House which comprised an office consisting of two large rooms, one being a display and sales room, the other for his office help, bookkeeper and cashier. To the rear of his office and in the same building he maintained a warehouse (R. 211-212), a part of which is controlled by The Douglas-Guardian Warehouse Company of Chicago, with whom he has warehouse arrangements, whereby a part of his seed is warehoused with that Company and on which warehouse receipts are issued.

In the remaining part of his warehouse he keeps what is known as "free seed," that being his seed which is not pledged. He also operates a mill for cleaning of seed. At R. 223 the Respondent testified:

"We have a regular set-up for doing business, filing system for seed, as well as letter copies, an adding machine, filing cabinet, sales registry, shelving and display counters, cleaning equipment, moisture testing equipment, threshing machine, clover huller, cleaning machinery, gravity cleaner, platform scales and counter scales."

In the operation of his business he employs a bookkeeper, also employs several other girls and men,—the girls working in the office in the preparation of mailing lists and advertising the seed business,—the men being employed in the warehouse and mill in the handling, cleaning and processing of seed (R. 88, 116-118). At the time of filing his petition his business was "going full blast" (R. 117).

Obviously his business was a "one man business." He personally did the buying, seeing to the processing and packaging and handling of all sales except perhaps small retail items (R. 87, 88). This necessarily required much travel in the Dakotas and other western states and in the East. He testified that in the year preceding the filing of his petition, he made trips to Buffalo, Chicago, Montana, North and South Dakota, Fort Wayne, Cincinnati and other towns in the vicinity of Paulding, Ohio (R. 118).

A witness, testifying as to the amount of time which the Respondent devoted to his business, stated (R. 123):

"I asked if he was going home to supper and he said 'No, he ate supper up town because invariably he came back and worked,' and when I mentioned the fact to him that his records were not complete, that he should have more help to maintain the records, and he said 'I know' and he said 'It is necessary for me to work late at night in order to keep this business going'."

In the spring of 1940 the Respondent negotiated a loan of \$15,000.00 with one of the Petitioners, the Cleveland Trust Company. In procuring this loan he submitted three financial statements (Bank's Exhibits 7, 8, and 9), covering the years 1937, 1938 and 1939. Each of these financial statements purported to be of the Stoller Seed House and reflected the financial condition of his seed business. He also represented to the bank that while he lived on a farm, he was engaged in the seed business. The financial statement covering the year 1937 (Bank's Exhibit 7) reported gross sales in his seed business amounting to \$356,726.34. His gross sales, as shown by his statement covering the year 1939, amounted to over \$302,000.00 (R. 213).

About three weeks later, in May of 1940, the Respondent negotiated a loan from the other Petitioner, the Central National Bank of Cleveland, in the amount of \$12,500.00, and submitted a financial statement of the Stoller Seed

House business, labeled "wholesale and retail seed business" (Bank's Exhibit 11, R. 181), which covered the period of time from May 15, 1939, to May 15, 1940, and shows gross sales amounting to over \$236,000.00, and a net profit of over \$12,000.00.

In procuring this loan he made like representations that he was engaged in the seed business and the money was needed for it. The financial statement purports to be entirely confined to the financial condition of his seed business, as the statement shows among other assets listed therein, real estate valued at \$72,500.00 *not used in business*. This real estate was his farm property. Respondent admits he did not include debts or farm chattels, for the reason "they didn't ask for it" (R. 92, 215).

Financial statements (Bank's Exhibits 8, 9 and 22, R. 90, 101, 119, 120) were subsequently submitted in due course of business; the latter was for submission to the Merchantile National Bank of Chicago and included the same period of time as that to the Central National Bank but there is quite a variance in these statements, both as to assets and earnings.

Considerable time and effort was spent by Petitioners to elicit further proof of the full extent of the financial affairs of the debtor, but as stated by the Circuit Court he did not have a system of bookkeeping or records from which the true net or gross incomes could be determined. The only records of the debtor consisted of a sales register and sales slips which took care of his retail business only (Bank's Exhibit 18), and not entirely so. He kept no record of his wholesale business other than in his letter files (Bank's Exhibit 19). During the year preceding this proceeding most of his business was done on the cash basis, and not by check.

A diligent effort was made to make an audit of his financial affairs. A Certified Public Accountant spent several days in an attempt to ascertain the status of his

income (R. 126) but as stated by the Circuit Court, his records were such as to make an audit impossible or to determine the source of the Respondent's income.

It also may be pertinent to note that the Respondent did not have a farm record for any previous year (R. 112-113), that the farm record for the current year was not prepared by the Respondent until during the course of the hearing (R. 227-228), and that it was only after repeated requests and demands, and a mandatory order from the Master that any records were produced. The farm record is purely a statement prepared by the debtor in his effort to show a net income from his farm operation, and to that end is purely a self serving declaration.

The Respondent himself was reluctant to be certain in his statements, qualifying his testimony to "about," "approximately," "as near as I can tell," and similar equivocation. The Respondent admitted that he did not know how much money he made in the year 1939 (R. 213).

The determination of the amount of his income is further confused by his income tax returns, or lack of returns. He testified that he made no return for the year 1938 (R. 90, 94), and that he did not pay any income tax for the year 1939 (R. 95).

About thirty days after the \$12,500.00 loan was procured from the Petitioner, the Central National Bank, it learned through its clearing house arrangements of the \$15,000.00 loan made by the Petitioner, the Cleveland Trust Company. The Petitioners immediately brought this fact to the attention of the Respondent, and, in endeavoring to enforce the payment of their respective loans, filed suits and recovered judgments thereon in the Court of Common Pleas of Paulding County, Ohio, in September and October of 1940. While the sales on execution were being advertised, the Respondent on November 7, 1940 filed his farmer-debtor petition to forestall further action on the judgments.

SPECIFICATION OF ERRORS.

The specific errors complained of and brought forward by the petition for a writ of certiorari, in the order therein presented, are:

(a) In finding that the net income of the Respondent, and not his gross income, was the proper basis for determining "income" within the meaning of the definition.

(b) In selecting as the period of time for such computation, a one year period ending nine months prior to the filing of Respondent's petition.

(c) In failing to consider and apply the statutory requirement of determining whether Respondent is "primarily" engaged in farming operations.

(d) In failing to consider and apply the statutory requirement of determining whether the Respondent is "bona fide" engaged in farming operations.

(e) In failing to consider the conduct of the Respondent in respect to representing himself to be primarily engaged in a business enterprise, fraudulently soliciting and obtaining credit upon such representations and to find and determine that this conduct was such as to estop him from enjoying the benefits of the Act.

These errors of the Circuit Court present the following questions:

(a) Should the term "income" be construed as meaning "net" income or "gross" income?

(b) In determining "income" what period of time prior to the filing of the debtor's petition should be considered?

(c) Should the relative volume of a business enterprise and the farming operations of a debtor and his activities in connection therewith be considered in de-

termining whether the debtor is "primarily" engaged in farming operations?

(d) Should the relative volume of the business enterprise and farming operations of a debtor and his activities in connection therewith be considered in determining whether the debtor is "bona fide" engaged in farming operations?

(e) May the conduct of a farmer-debtor in respect to representing himself to be primarily engaged in a business enterprise and fraudulently soliciting and obtaining credit upon such conduct and misrepresentations, be such as to estop him from enjoying the benefits of the Act?

ARGUMENT.

The argument of the Petitioners may be summarized by the statement:

That the Circuit Court erred in construing "income" as meaning "net" income; in determining the period of time for computing such income, at other than at the time of filing the petition and of too short a period; in failing to determine whether the Respondent was "primarily" engaged or "bona fide" engaged in farming operations, and in failing to consider the fraudulent conduct of the Respondent to be such as would estop him from claiming the benefits of the Act.

It is further contended that these errors should be reviewed for the reason that the decision is in conflict with that of another Circuit Court of Appeals; that it is in conflict with the decision of this Court, and that it presents several questions of Federal law which have not been, but should be, settled by this Court in the interests of justice to the Petitioners and to clarify and otherwise expedite and facilitate the administration of the Bankruptcy Act.

These errors and the questions are presented in the order named:

A. Should the Term "Income" be Construed as Meaning "Net" Income or "Gross" Income?

The Circuit Court is decidedly in error in concluding that "net" income is the proper basis in determining whether the principal part of the Respondent's income is derived from farming operations. First, because "gross" income would better appraise the situation, and is the rule which has been generally adopted by the courts, second, because the records of the Respondent, as determined by the Circuit Court, were such that it was impossible to determine the amount or from which enterprise the income was received, and, third, because the amount of the gross income from farming operations, according to Respondent's own statement, is only one-seventh that which he received from his business enterprise (R. 143).

We think the "gross income" rule as generally adopted by the courts should have been followed. In *In re Knight*, 9 Fed. Supp. 502, the Court states that:

"And 'income' I construe to mean 'gross income.' Otherwise, when, by drought or depressed market conditions, the agricultural producer operates at a loss, he would cease to be a farmer entitled to the benefits of the Act, if he had any net income from nonfarming operations. Certainly Congress did not intend that such a producer should cease to be a 'farmer' and lose the benefits of the Act at the very time when he is most in need."

In *In re Hilliker*, 9 Fed. Supp. 948, it was also held that the word "income" means the gross income as distinguished from net, stating at page 949:

"Suppose a man with a city merchandising business has five acres of land on which he does not live and which produces some sort of fruit or other soil products, and happens to find that his merchandise business in stress of poor times does not yield a profit and, nevertheless, received a profitable return from the fruit on the land. Can it be thought that he should be

rated as a farmer and entitled to the benefits of the provisions of Section 75? The answer, of course, must be 'No.' "

And this Court in the case of *First National Bank vs. Beach* (*supra*), had under consideration the total gross income which was derived from the farming operations of the debtor, and there was no attempt in that case to require or to find that the debtor had a "net" income from his farming operations.

It is also apparent that in the case of *Beamesderfer vs. First National Bank and Trust Company*, 91 F. (2d) 491, only gross income was considered. The facts in this case are parallel in the respect that the indebtedness arises out of a mercantile business.

The decision of the Circuit Court would also appear to be quite inconsistent. In its analysis of this phase of the case it found that the Respondent's business records were insufficient to bear an audit by a certified public accountant, and that it was impossible to accurately determine the source of Respondent's income, yet it followed with a finding that the principal part of Respondent's income was from farming operations and it predicated its conclusion on the latter. It would seem to be a conclusion without a premise.

Again the Court found that the Respondent's total gross seed sales, including farm produce, amounted to \$260,000.00 in the year selected by the Court. The Respondent himself (R. 143) places his farm income in the same period at \$35,163.35 or approximately one-seventh of the total, yet the Court finds that this principal part of his income "goes down into the soil."

The Court found that Respondent's records were of no value for accounting purposes, yet concludes that his testimony as to the major portion of his "net" income is derived from farming operations is neither established nor disproved by his records. Surely some burden is upon a

debtor to maintain his claim as to income. The reasoning of the Circuit Court enables and encourages a debtor to destroy or to not keep records in order that only his statements may be relied upon.

The Court must have overlooked the Respondent's financial statements, showing approximately 10% profit on gross sales of seeds, the 90% being costs of merchandise sold. For the accounting period selected by the Circuit Court, his purchases would amount to \$234,000.00.

Obviously the Court must have been confused.

B. In Determining Income, What Period of Time Prior to the Filing of the Debtor's Petition Should be Considered?

This would seem to be a very important factor in determining whether the principal part of the debtor's income is derived from farming operations or from other sources. The Circuit Court arbitrarily selected a period of one year, ending May 15, 1940 and nine months prior to the filing of his petition on November 7, 1940. This would not appear to be fair either as to length of time or in relation to the date of filing. The nine months immediately preceding the filing may or may not show a much different financial picture.

The period that would more accurately appraise the income status of the debtor would be that which obtained at the time he filed his petition, and for such a period preceding as would include his usual and ordinary vocation and manner of living. We are partial to the five year period as considered by this Court in *First National Bank vs. Beach*, 301 U. S. 385.

To adopt another rule or shorter period as did the Circuit Court, would permit or enable an individual who is primarily engaged in a business enterprise, upon deciding that his business would temporarily operate at a loss, to purchase an equity or to remove to a farm in which he had

an equity, and after residing thereon for a few weeks or months to then obtain a composition and extension of his business obligations. The advantage that may be so taken of such a rule is indicated in this case. The farm which the debtor owns and where he resides is a few miles from his place of business. It is encumbered by a mortgage of approximately \$40,000.00, leaving but a small, if any, equity in the Respondent.

While the Circuit Court observed a Certified Public Accountant could not determine from Respondent's records as to his income and the Court concluded that it was not possible to determine the source of Respondent's income, yet by Respondent's own statements, his gross for 1937 was \$356,726.34. For some unexplained reason his operating report for 1938 was not available, but the assets were in line; for 1939, \$203,000.00 and for the year ending May 15, 1940, \$236,000.00.

Obviously his "income" for any nine month or annual period would vary and perhaps change the status of the debtor as within or without the "income" definition. The Circuit Court erred in this respect, and would seem to be at variance with this Court.

It is unfortunate that the Congress did not go into more detail in its definition. The term gross or net income could have been stipulated, the period of time could have been provided and resultant confusion avoided. We appreciate the difficulty of phrasing a general interpretation and it must necessarily be applicable to the individual case, but it should be of such length of time as will fairly establish usual and customary vocation and manner of living at the time of filing his petition. In any event, the disapproval of the period adopted by the Circuit Court would tend to emphasize the importance of careful consideration of this phase of the definition.

C. Should the Relative Volume of a Business Enterprise and the Farming Operations of a Debtor and His Activities in Connection Therewith be Considered in Determining Whether the Debtor is "Primarily" Engaged in Farming Operations.

The evidence relating to the Respondent's farming operations and business activities, definitely establish the fact that at the time of filing his petition and for a period of sixteen years, he had been engaged in operating a wholesale seed business, and also in farming a considerable acreage. This requires the determination in which of the two was he "primarily" engaged within the meaning of the Act.

It is contended that the Circuit Court, in arriving at its decision, did not consider and entirely ignored the requirement that he must be "primarily" engaged in farming operations.

While the Court recognized that the Respondent was "personally" engaged, both in farming and in conducting his seed business, we fail to find where the Court specifically held that he was "primarily" engaged in either of the two enterprises and in this we think the Court erred. In arriving at its decision the Court cited the case of *First National Bank vs. Beach*, 301 U. S. 435, 438, 439, in which it was held:

"The words 'primarily engaged' as we find them in the first branch of the definition does not constitute a term of art. The words 'income derived from farming operations' does not constitute such a term. In each case the totality of the facts is to be considered and appraised."

But the Court failed to show the application of the law as announced in that case to the facts in the instant case.

In *In re Day*, 10 Fed. Supp. 229, the Court well defined the word "primarily" as meaning basically, or in such manner as to be of first importance. It, therefore, is to be

determined what is the chief interest of the Respondent. Was it his farm or his seed business? In arriving at a conclusion it is well to consider what the Respondent himself admitted as being his primary and chief concern.

It is to be observed that in the management of the seed business he was so concerned that he would not delegate authority to any one. He personally attended to the buying, the processing, the packaging, the selling, the financing and advertising. In fact, he followed the Franklin adage "that if you wish a thing well done, do it yourself." To start from scratch and build a business to over \$350,000.00 annually necessarily required his time, efforts and personal attention. Such an accomplishment requires initiative and executive ability that is seldom for hire.

This was not true of the farm. As to its management, he delegated almost every operation, excepting that which is usually reserved to ownership. It was the four, five or six men that he maintained under the supervision of his brother as foreman (R. 94) who personally tilled and cultivated the land.

Then too, the amount of time which he devoted to his business is indicative of his concern. The Circuit Court found that the Respondent did devote more than half of his time in the management of his business, but we submit the record fairly shows that he gave a far greater portion than half. His own secretary stated that he worked in his office at least half of the time during the day and frequently at nights (R. 170-171), and he told the Deputy Revenue Collector that he frequently ate his evening meal in town so as to continue his work during the night.

Another yardstick in determining what is his chief concern, is what he, himself, said it was. In all of his advertising, Dun and Bradstreet reports, and in his many financial statements, he stated that he was a business man engaged in the wholesale and retail seed business. It was not until he was pressed by suits and filed his petition,

did he change and for the first time assert himself to be a "farmer." By all these means by which the interest or concern of an individual may be ascertained, the Respondent's primary, basic and chief concern was his seed business.

The Circuit Court in arriving at its decision was apparently influenced or impressed by the fact that the Respondent always lived on and operated a farm, and attached little, if any, importance to the further fact that he had also conducted a seed business for a period of sixteen years to such extent that it reached a gross volume of \$350,000.00 annually. Because the Circuit Court specifically found "the seed business exacted increasing demands upon his time until he devoted somewhat more than half of his working hours to this work," the Court's decision should have followed this finding of fact, as it is one of the major factors by or through which the Respondent's chief or primary interest is determined. We cannot reconcile the Court's decision with such finding of fact.

We think the Court's reliance upon the case of *First National Bank vs. Beach* (*supra*) does not constitute sufficient authority for the position taken by the Circuit Court, as the facts in the *Beach* case bears no relevant resemblance to the facts which are here in controversy. In that case the Court specifically found that the debtor-farmer was not engaged in any occupation other than farming, and said:

"The critical fact is that the debtor worked an acreage large enough to count, *that he did not work at anything else*, and that he gave to this work, whether profitable or unprofitable, the major portion of his time."

In the instant case the Respondent was decidedly engaged in a mercantile business of huge proportion to which, the record shows, he devoted more than half of his time.

D. Should the Relative Volume of the Business Enterprise and Farming Operations of a Debtor and His Activities in Connection Therewith be Considered in Determining Whether the Debtor is "Bona Fide" Engaged in Farming?

Another word of limitation contained in the statute is the word "bona fide" which should be given equal consideration with the words "primarily" and "personally."

Obviously, the good faith of a debtor is of primary importance. Otherwise the Act could be used as a means of perpetrating fraud on creditors. In any year the earnings of a business may fluctuate from the unexpected windfall to an unforeseen loss and a business man by the simple expedient of residing on a farm or by giving some supervision thereto, could forestall his business creditors by claiming to be a "farmer."

The record should have been closely scrutinized by the Circuit Court, as to the comparative time, attention and efforts devoted by the Respondent to his two enterprises, and it should have been clearly determined that such activities as were devoted to his farming operations were "bona fide" and not for the purpose or with the intention of creating and establishing an opportunity of taking advantage of the Act, should his business enterprise become jeopardized.

Such consideration is particularly pertinent in this case in view of the facts and circumstances. The Circuit Court found that his business enterprise reached a peak of \$350,000.00 annually. That during the particular period of time which it considered, the gross income amounted to \$260,000.00 which included some income from the farm on which he resided. The Court also found that his bookkeeping was such as to make impossible an audit or a determination of his source of income and that his financial status was directly resultant from his business activities.

These findings in and of themselves should not only have excited inquiry, but they present a record that is hardly compatible with a conclusion that his farming activities were "bona fide." The importance of such an analysis and determination in all cases, particularly those cases in which the debtor has substantial interests other than farm operations, is quite evident and the necessity of such analysis and approval should be emphasized by this Court.

E. May the Conduct of a Farmer-Debtor in Respect to Representing Himself to be Primarily Engaged in Business Enterprise and Fraudulently Soliciting and Obtaining Credit Upon Such Conduct and Misrepresentations be Such as to Estop Him from Claiming the Benefits of the Act?

Regardless of the consideration of "bona fide" as a term of the definition, we believe the "bona fide" or good faith of the debtor is subject to and should be considered by the Bankruptcy Courts under their general equitable powers.

As the Master summarizes, and as outlined in the statement, the Respondent has continuously posed and held himself out as engaged in the wholesale and retail seed business by letters, pamphlets, circulars, catalogues and other media of advertising; he from time to time soliciting credit for the financing of his business, representing himself and specifically stating that he was engaged as a wholesale and retail seed merchant, and went from bank to bank seeking to obtain this assistance.

Both Petitioner banks were given to understand, in their discussions with him of the nature and extent of his business, its volume, markets, etc., that he was engaged in the wholesale and retail seed business, although he resided on a farm, and Respondent knew they had this understanding (R. 213). Had there not been such an understanding, the officers with whom he dealt would not have made the

loans, their authority being restricted by policy and custom to commercial loans.

The Respondent reluctantly admitted falsifying the financial statements by omitting large and substantial obligations (R. 215), and purposely listing his home farm and not his farm chattels and machinery, so as to obtain a business rating. Then, when his fraud was discovered and payment was demanded of his business obligations he, then, for the first time, claims to be a "farmer" and seeks use of the Act as a means of avoiding payment of his just business debts.

The Petitioners are not asking that Respondent be refused bankruptcy, but, on the contrary, are urging that he be so declared. They are merely demanding that he not be permitted to take advantage of the special provisions for "farmers" but must be bound by the Bankruptcy Act, which should and would protect him to that extent to which he deserves.

Regardless of his status under the definitions and assuming for the purpose of argument and for that purpose only, that Respondent does come within the purview of the Act, he has, by his own inequitable conduct, forfeited every right and privilege to which he might be entitled.

Social legislation, commendable as it is, is usually vulnerable to the unscrupulous. This fact was recognized and mentioned by the President in commenting on this Act in one of his Fire Side Chats. Great care and consideration must be exercised in shielding and protecting such legislation to discourage and avoid it being made an instrument of fraud.

The Circuit Court erred in failing to consider and determine such a factor in this case and the importance of such consideration should be emphasized and established by this Court in the interests of the public weal.

In conclusion, your Petitioners respectfully pray the Court to order the United States Circuit Court of Appeals

for the Sixth Circuit to certify and to send to this Court for its review and determination a transcript of the record and proceedings herein, for the following reasons:

(1) The questions raised by the decision of the Circuit Court of Appeals, as enumerated in the Petition for a Writ of Certiorari, present new and important questions of national interest which have not heretofore been decided by the Supreme Court of the United States.

(2) In its decision the Circuit Court of Appeals incorrectly distinguished and failed to follow the case of *First National Bank vs. Beach*, 301 U. S. 385, which is a controlling decision of this Court and one of the leading decisions in the United States defining the term "farmer."

Respectfully submitted,

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FRANKS & COMPANY

IN THE
Supreme Court of the United States

OCTOBER TERM 1942

No. 988

THE CLEVELAND TRUST COMPANY AND THE CENTRAL
NATIONAL BANK OF CLEVELAND, OHIO,
Petitioners,

vs.

MICHAEL GEORGE STOLLER,
Respondent.

ON APPLICATION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE
SIXTH CIRCUIT.

OPPOSING BRIEF OF RESPONDENT.

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Note. All emphasis in this brief is supplied unless otherwise stated.

MAP

There is inserted at the end of this brief a folded map showing the farms operated by the respondent which are referred to in the testimony or in the exhibits. By open-

ing out the map it will lie before the reader for reference during the reading of this brief.

The Opinions, etc., Below

The opinion of the appellate court is reported as *Stoller v. Cleveland Trust Company*, CCA 6 (1943), 133 Fed. (2d) 180. It is found at R. 242 to 247.

The memorandum opinion of the district court is not reported. It appears at R. 190 and 191.

The report of the supervising conciliation commissioner to whom the matter was referred as a special master is at R. 24 to 84.

The transcript of evidence is at R. 85 to 189.

The petitioners' motion to dismiss is at R. 22 to 23.

STATEMENT OF THE CASE.

Having Reference to Pages 16 and 17 of the Petitioners' Brief.

The statement in the petitioners' brief, at pages 16 and 17, that the respondent "rapidly gave up his farming supervision," and restricted himself to "landlord work", is answered at pages 17 to 28 of this brief.

Having Reference to Pages 17 and 18 of the Petitioners' Brief.

The assertion that respondent had a "special franking privilege (R. 187)" from the Post office is not true. There

is no reference to a "franking privilege" at R. 87 or at any other place in the record. There is in the special master's Findings of Fact at R. 25 (middle of the page) a statement that he has a "postal permit for mailing of his advertising matter". Such a postal permit may be obtained by anyone who applies for it.

**Having Reference to the Bottom of Page 18
of the Petitioners' Brief.**

The petitioners' statement that in the seed business "he employs a bookkeeper, also employs several other girls and men—the girls working in the office in the preparation of mailing lists and advertising the seed business,—the men being employed in the warehouse and mill in the handling, cleaning and processing of seed" is disproved by their own references to the Record ("R. 88, 116-118") and is further disproved by the references to the record at pages 24 (Witness De Latt) and 25 (Witness Gehau), in this brief.

**Having Reference to Page 19 of the
Petitioners' Brief.**

(The quoted paragraph at the middle of the page)

The respondent occasionally worked at his seed records at night because his farm work came first and he devoted to the seed business the "tail ends" of his time. This is shown from the record at page 25 (Witness Gehau) in this brief.

**Answer of the Respondent to the
ARGUMENT.**

Set forth in the Petitioners' Brief at pages 23 to 34.

Restricted Range of Petitioners' Objections.

The petitioners' petition and brief are grounded exclusively upon **that portion** of the definition of a "farmer" in Section 75(r), which relates to **income**. They ignore the first, and principal part of the definition of a "farmer" which relates to the **production of agricultural products**.

The record demonstrates that, not only the "**principal part**" of his income, but his **only income** came from the farm. The seed business, which grew out of his farming occupation was a constant drain upon the farm profits and finally brought him down. His farm debts were not pressing. His obligations growing out of his ill-starred seed business caused him to borrow from the petitioners who took judgment and levied on his farm chattels. When the sheriff's sale was advertised he filed his farmer debtor petition. R. 186 to 188. R. 6.

When the facts are measured by either branch of the statutory definition of a "farmer" in Section 75(r), (that is whether by occupation or by income), the appellant is a "farmer". He smacks of the soil and the roots of his occupation and of his income go down into the soil.

The Statutory Definition of a Farmer Examined.

Decisions of This Court.

The original definition of a "farmer" in Section 75 (r), Act of March 3, 1933, was not changed but merely amplified and clarified by the amendment in the Act of May 15, 1935. This Court said in *First National Bank v. Beach*, 301 U. S. 435 at page 438:

"The only effect of the 1935 amendments of the statute, in so far as they have to do with the definition of a farmer, was to make it clear that farming operations include dairy farming and the production of poultry and livestock products in their unmanufactured state as well as the cultivation of the products of the soil. There had been decisions to the contrary."

This statutory definition of a "farmer" in Section 75 (r), and no other, is controlling in a proceeding under Section 75. *Benitez v. Bank*, 313 U. S. 270.

Analyzing and Expanding the Definition of a "Farmer" in Section 75 (r).

Upon analysis this definition of a farmer is seen to contain two main divisions and seven separate definitions, **any one** of which constitutes a "farmer".

The applicable portions of the definition are here expanded:

Division I, **OCCUPATION.**

First Definition: The term "**farmer**" includes an individual who is primarily bona fide personally engaged in **farm operations**, that is, in **producing products of the soil**.

Second Definition: The term "**farmer**" includes any individual who is primarily bona fide personally engaged in **dairy farming**.

Third Definition: The term "**farmer**" includes any individual who is primarily bona fide personally engaged in the **production of poultry**.

Fourth Definition: The term "**farmer**" includes any individual who is primarily bona fide personally engaged in the **production of livestock**.

Fifth Definition: The term "**farmer**" includes any individual who is primarily bona fide personally engaged in the **production of poultry products** in their unmanufactured state.

Sixth Definition: The term "**farmer**" includes any individual who is primarily bona fide personally engaged in the **production of livestock products** in their unmanufactured state.

Division II, **INCOME**

Seventh Definition: The term "**farmer**" includes any individual, the principal part of whose **income is derived from farming operations**, that is from **any one or more** of the following operations:

- (1) **Producing products of the soil;**
- (2) **Dairy Farming;**
- (3) **The production of poultry;**
- (4) **The production of livestock;**

- (5) The **production of poultry products** in their unmanufactured state;
- (6) The **production of livestock products** in their unmanufactured state.

Any of Seven Definitions Constitute a Farmer.

It is to be noted that when either the activities or income of a debtor bring him within **any one** of the foregoing seven separate definitions, he is a "farmer" for the purposes of Section 75.

The Supervising Conciliation Commissioner, as Special Master, and also the appellate court, found that the respondent qualifies as a farmer debtor under Section 75(r) **whether measured by either division of the statute, that is whether by occupation, or by income.**

Specifically the evidence proves that the respondent is a "farmer" by **each one** of the following of the seven statutory definitions:

By the first definition he is a "farmer" because he is primarily bona fide personally engaged in **farming operations, that is, in producing products of the soil.**

By the fourth definition he is a "farmer" because he is primarily bona fide personally engaged in the **production of livestock.**

By the sixth definition he is a "farmer" because he is primarily bona fide personally engaged in the **production of livestock products in their unmanufactured state.**

By the seventh definition he is a "farmer" because **the principal part of his income is derived from farming oper-**

ations, that is from one or more of the following operations:

Producing products of the soil.

The production of livestock.

The production of livestock products in their unmanufactured state.

In fact, whether there is considered the last three years as a whole or the last year alone, his only income has been from the farm operations. The monetary tide ran the other way in the seed business, absorbing not only the farm income but the borrowed money represented by the ninety day cognovit notes given to the petitioners and by them reduced to judgment. It was these judgments which precipitated the filing of the farmer debtor petition.

The Application of the Statutory Definition to the Respondent.

Conflicting Conclusions of the Court Below.

The Special Master found, and the appellate court likewise found, that whether judged by occupation or by income, the respondent was a "farmer" and that the cause of the debts was immaterial. R. 24, R. 244 bottom of page to R. 246 bottom of page.

The special master's findings of fact were:

"He was in financial difficulty, not because of nor through his farming operations but through his seed business operations. **His farming operations resulted in a net profit and his seed business operations in a net loss.** It must be found that the principal part of the debtor's income was derived from producing products of the soil and the production of livestock

and livestock products in their unmanufactured state." Report of the Special Master, R. 57.

"1. The debtor was primarily, bone fide, personally engaged in producing products of the soil and in the production of livestock and livestock products in their unmanufactured state prior to filing his petition in this case.

2. The principal part of the income of the debtor for the year preceding the filing of his petition herein was derived from the products of the soil and the livestock and livestock products in their unmanufactured state, produced by him." Report of the Special Master, R. 57.

The Special Master's Conclusion of Law was: "The debtor is entitled to the benefits of Section 75 of the Bankruptcy act as a farmer who comes fully within the definition contained in Section 75 (r)." Report of Special Master, R. 57.

The District Judge overruled the Special Master and held that by occupation and income the petitioner was not a "farmer" and also that the substantial portion of his debts was incurred outside of farming. He said:

"I have concluded that Michael Stoller was basically, fundamentally and primarily engaged in the wholesale and retail seed business; that his interests lay there; that his energies and attention were primarily devoted there; and that instead of being personally engaged in the business of farming he was personally engaged in the seed business. I am further of the opinion from the record that the principal income that accrued to Michael Stoller during a period of years prior to the filing of his petition in bankruptcy was derived from the seed business, and I am further convinced that the substantial portion of his indebtedness that brought him to the bar of the bankruptcy court was incurred in the operation of that seed business. *Beamesderfer v. First Nat. Bank & Trust Co.*,

(CCA 3d, 1937) 91 F. (2d) 491." Memorandum of the Court, R. 190.

Particularly pertinent extracts from the opinion of the appellate court:

"There is controversy concerning his customary daily movements from his farm to the situs of his seed business in Paulding, Ohio; but it appears that his day began at the usual early hour for farmers, and that he constantly performed some regular farm routine, gave instructions for farm operations, and prepared and kept records of the same; more adequately, indeed, than he kept the books of his seed business. However varied his activities, it is apparent from the record that the industrious appellant applied a most substantial portion of his time to the work of a 'dirt farmer.' He plowed, planted and husked corn; sowed wheat and oats; drilled and harvested beets; mowed alfalfa hay and clover; and ran a tractor and a combine, threshing machine, binder and reaper. He did most of the farm repair work and gave attention to drainage and tiling problems. The usual custom of appellant, after completing his most pressing farm work and instructing the farm hands, was to proceed to his seed house between eleven and twelve o'clock, and to return around four or five o'clock in the afternoon for the resumption of his part of planting, plowing, or whatever might be the order of the day upon the farm." R. 245, last paragraph, running over to the top of R. 246.

"On the record before this court, it is not possible to determine accurately the source of appellant's income. Apparently, he kept his farm and his seed business records as a unit. He testified that the income statements which he prepared for the creditor banks were based on his combined operations. His testimony indicates that the major portion of his net income was derived from farming operations, but this

testimony is neither established nor disproved by his own records. His reports to the Department of Agriculture indicate that his farming operations were profitable; and the fact that the preponderance of his debts were weighted upon him from the seed business is corroborative of his assertion that the principal part of his income was derived from farming." R. 246, second full paragraph on the page.

The Reasons for These Conflicting Conclusions.

The reasons for these opposite conclusions of the Special Master and the District Judge become apparent from a study of the statute and of the testimony and exhibits. The reasons will first be stated and then discussed.

The first reason for the disagreement: The misconstruction of the statute by the District Judge.

The second reason for the disagreement: The hearing before **the Special Master** took five days. He **personally heard and often personally questioned the witnesses**, and **he had before him all of the exhibits**, some sixty-six in all.

The third reason for the disagreement: **The District Judge did not have access to all of the exhibits.** In fact, most of the papers were never transmitted to the clerk or to the Judge of the court, but remained, by stipulation of the parties because of their bulk, at the place of hearing and were never removed to the office of the Judge.

These three reasons for the conflict of conclusions in the District Court will now be examined.

1.

The First Reason for the Disagreement: The District Judge Misconstrued the Statute.*The Conclusions of the District Judge.*

The Judge read "and" into the statute in place of "or". He also held to be important the fact that the debts which precipitated the farmer debtor proceeding were incurred outside of the farming business. R. 190.

These conceptions of the requirements necessary to meet the definition of a "farmer" in Section 75 (r) were first suggested by the petitioners' motion to dismiss as is disclosed when the substantial parts of the motion and of the court's memorandum opinion are put side by side for comparison.

Indeed a perusal of the motion at R. 22 and of the Memorandum of the District Court at R. 190 discloses how closely the memorandum opinion follows the form of the motion. An analysis of the motion to dismiss, at R. 22, is here made for comparison with an analysis of the memorandum opinion of the District Court at R. 190.

**The Petitioners' Motion and the Memorandum Opinion
of the District Court Analyzed and Compared.**

1.

The Petitioners' Motion.

(R. 22)

The debtor is not primarily bona fide engaged in farming **and** his principal income is not derived from farming.

**The Memorandum of the
District Court (R. 190).**

The conclusion of the Special Master that the farmer debtor was primarily bona fide personally a farmer **and** his principal income was therefrom should be overruled.

2.

The debtor is not a farmer **under Section 75 (s)**. [The case had not progressed into bankruptcy under Section 75(s)].

Each case involving the question of whether a debtor **in bankruptcy** is a farmer should stand on its own bottom. [The case had not progressed into bankruptcy. By statute and by General Order 5 (5) of the Supreme Court, the appellant remained a "debtor".]

3.

The debtor is **primarily engaged in the seed business** and his gross income is derived from it and not from farming.

He is basically fundamentally and **primarily engaged in the seed business**. His principal income prior to filing his petition in bankruptcy was from the seed business.

4.

The debtor is not personally and primarily engaged in farming but devotes all his time and attention to the seed business.

Instead of being personally engaged in the business of farming he was personally engaged in the seed business.

5.

Except for a farm mortgage and a chattel mortgage all of his debts were incurred in the seed business.

The substantial part of his debts that brought him into bankruptcy was incurred in the seed business.

6.

The operation of the farms was by other persons and such operation was not producing products of the soil "but the feeding out of livestock," [sic] and the secured debts grew out of feeding livestock.

The farmer debtor supervised the farm operations by giving directions to his foremen and workmen on the farm in the mornings before going to the seed store. Very little in the record to show he was personally engaged in farming.

The Conclusions of the Special Master.

The Supervising Conciliation Commissioner, acting as Special Master, by a minute and extensive discussion of the evidence, the law and the court decisions, and a copious digest of the evidence, occupying sixty pages of the record extending from R. 24 to 84, came to the following separate and distinct conclusions. See R. 57. **Any one of these conclusions made the respondent a "farmer" as defined in Section 75 (r).**

These conclusions were:

1. The respondent was primarily in good faith **personally engaged in farming**, and he was primarily and personally in good faith **producing products of the soil**.

2. He was primarily in good faith **personally engaged in producing livestock**.

3. **The principal part of his income was derived from farming operations**, in fact, he had no other income except that from the farm crops and livestock.

The seed business was run at a loss. As stated by the movants in their motion (R. 22) and in the Memorandum of the Court (R. 190) the debts which precipitated the farmer debtor proceeding arose out of the ill fated seed business venture which gobbled up the farm income faster than it could be produced from several hundreds of acres. **The Judge, the Special Master, the Movants and the Debtor all agree upon this point.**

In his discussion of the law and facts the Special Master showed that any one of the proved elements was sufficient to entitle the respondent to the benefits of the farmer debtor statute.

The Special Master had all of the exhibits before him, those that remained at the place of hearing and those transmitted to the office of the District Court. The Judge had only those sent to the office of the District Court. This explains the opposite factual and consequent opposite legal conclusions reached by the Special Master and by the Judge. The proof of these statements will now be discussed.

2.

The Second Reason for the Disagreement: The Hearing Conducted by the Special Master.

The hearing before the Special Master required five days in all.

The following quotations are from the Special Master's report:

R. 24: . . . "hearing was commenced . . . on December 14, 1940."

R. 24: "Hearing . . . was continued until December 16, 1940, . . . In the afternoon of such day, the hearing was adjourned to the office of the debtor at Paulding, Ohio, to facilitate the obtaining and presentation of papers and records introduced as Exhibits."

R. 24: ". . . continuances were had and further hearing held on December 20, 23, and 27, 1940, at the office of the debtor."

The Third Reason for the Disagreement: The Judge Did Not Have Access to All of the Exhibits.

Only part of the exhibits were transmitted to the District Judge with the report of the Special Master. The Report states that by stipulation of counsel "such exhibits, all of which are bulky, remain in the office of the debtor in Paulding, Ohio, subject to the order of the court." R. 58. R. 111. The district judge did not call for the exhibits which were left at the place of hearing and they were never seen by the judge.

These three reasons explain the divergent conclusions of the Special Master and the District Judge.

AN EXAMINATION OF THE EVIDENCE.

Farming Operations.

What the Testimony Shows About the Farming Operations of the Respondent.

It is when we turn to the testimony in the record that we see the precise and abundant evidence which led the Supervising Conciliation Commissioner as Special Master to the inevitable conclusion that the respondent is a "farmer" as defined in Section 75 (r).

The Testimony Concerning the Respondent's Farming Operations.

The Special Master summarized the evidence thus:

"He lived on the big farm with his father (the same one now in his name), until he was 22 years old. He thereafter lived for 1 year on a farm in Latty Township, of 160 acres and from there to Paulding Township, where he lived for 19 years. He moved to the big farm on March 4th, 1940. He began to operate as an independent farmer when he was 22 years old. He farmed 160 acres and exchanged work with his father." R. 69.

The respondent himself testified that he is 42 years old. Lived in Paulding County "twenty-nine year." Came to the community with his family when fifteen years old. R. 131. Lived on farms and farmed since five years old.

R. 131. Moved upon a 160 acre farm for a year after leaving home. He then moved to the Huber Farm of 160 acres where he lived nineteen years. During the last year he moved to the "Home Farm" of 435 acres where he now lives. He is one of the leading farmers in the community: "Brady Brothers were and Mike Stoller." Related by Burdick, a witness for the petitioner. R. 105. R. 131 and 132.

The Farms He Operated in Recent Years.

In 1936 he farmed 1785 acres, comprised of the "Home Farm," Dittenhaver Farm, Sugar Company Farm, Huber Farm, Ferrell Farm, Northwestern Mutual Farm, Section 15, farm of 240 acres, Latty Township Farm, Barnes Farm, Graham Farm, Mikels Farm. R. 132, R. 133.

In 1937 he farmed the same acreage, 1785 acres. He owned the same land and had the same Barnes farm under contract. R. 134.

In 1938 he farmed the "Home Farm," the Huber Farm, the Sugar Company Farm, the Latty Township Farm, and he looked after a rented Latty Township Farm, total 1095 acres. R. 134.

In 1939 he farmed the same acreage as in 1938, 855 acres. R. 134.

In 1940 he farmed 515 acres.

The Special Master summarized the evidence on this subject as follows:

"In that year [1936] he farmed 135 acres in Jackson Township, Section 31; 130 acres from D. L. Dittenhauer estate in Jackson Township; 180 acres for the Paulding Sugar Company in Section 13; 160 acres Carvey Huger farm, Sec. 23, Paulding Township, 40 acres;

Oliver Ferral farm, Sec. 23, Paulding Township; 120 acres for Northwestern Mutual Life Insurance Company, Sec. 15, Paulding Township, 240 acres; Sec. 17, Latty Township, 80 acres in Sec. 15, Latty Township. During that time he owned 555 acres. He also had a land contract on 200 acres which he improved and tiled and later on turned over to one H. G. Barnes. He also farmed 240 acres in Sections 22 and 26, Oren Graham farm, and 160 acres E. E. Michel's farm, Sections 22 and 25 in Paulding Township." R. 69.

"In 1937 he farmed the 435 acres called the home farm, the 160 acres, the Huber farm, and the 180 acres the Sugar Company farm, and the 80 acres, the Latty Township farm, and looked after the other 240 acres in Latty Township, rented it.

"In 1939 he farmed the same acreage as in 1938, 815 acres.

"In 1940, he farmed 515 acres." R. 70.

The records and exhibits show that Mr. Stoller has farmed the following tracts which are indicated on the map at the end of this brief:

| | |
|---|-----------------------------------|
| 3 Stoller owned (435, 80 and 40 acres) | 555 acres |
| 1 Barnes or Laukhoff Farm (Land Contract) | 200 acres |
| 2 Deleat Farms (329 and 20 acres) | 349 acres |
| 1 Dittenhaver Farm | 129 acres |
| 1 Ferrell Farm | 40 acres |
| 1 Franklin or North Western Mutual Farm.... | 120 acres |
| 4 Graham Farms (160, 80, 40 and 20 acres).... | 300 acres |
| 1 Huber Farm | 160 acres |
| 2 Mikels Farm (160 and 66 acres) | 226 acres |
| 1 Rocky Farm | 160 acres |
| 1 Sugar Company Farm | 180 acres |
| 1 Carr Farm | 160 acres |
| Total Farms—19 | |
| | Total acres farmed.....2579 acres |

The fact that his farming operations, much of them as a tenant, were confined to the same community indicated that he must have achieved a good reputation as a farmer. Only

a "first hand" dirt farmer whose primary interest is farming can produce profits as a tenant. A "second hand" absentee farm tenant whose chief industry is applied at something other than farming can not be a good farmer.

**He Was "Personally Engaged in Farming Operations."
The Special Master's Summary on This Subject.**

"He also operates threshing and combining rigs and does some custom seed cleaning." R. 26.

"The debtor's farm duties, as he testified concerning them, were the looking after tiling and draining problems and 'most other landlord work'. It included the erection and repair of buildings and the repairing of tractors." R. 26.

"He generally helps with the chores in the morning during the time he is at home. He spends approximately an hour at that task. He has also plowed and planted on occasion and has given instructions to the men working for him. He maintained and fed 160 steers. Likewise on occasion, he personally fed such steers, shocked some corn, hauled sugar beets and did other work about the farms." R. 26.

"He has no foreman, he instructs his men himself every morning, and looks after them and works with them." R. 71.

"He also bought and fed steers, fed and sold them between November 1, 1939, and November 1, 1940. The 8692 bushels of corn, and 96 tons of clover hay fed the steers was raised on his farm. 50 tons of molasses was purchased. The mixed feed for hogs was obtained in exchange for soy beans which were raised on the farm. 4112 bushels of corn was partly raised on the farm and partly purchased.

"He bought some hogs (10) and raised the others." R. 72.

"He bought 100 head of steers on September 25, 1939. On October 3, 1939, he bought 72 more." R. 77.

He is a member and officer of the Farm Bureau, of the Equity Elevator Exchange, and of the Rehabilitation Board, also of the Delegation Committee of the Sugar Company. R. 71.

The Respondent's Testimony:

"Who did the farming?" "I did it all with my own help and extra help it required." "I did tiling and other work during the winter months." R. 133.

"Tell the Court what" . . . "work you did in the cultivation of the crops? Any and every job, usually started every bit of corn planting, and the beet drilling and plowing and the repairing of tractors, run a threshing engine and did all the repair work on them; I did the repairing during the slack time, and during the summer took care of all the heavy work on the big machinery and all that work." "Pertaining to the cultivation what work did you do? Always extra man to run the tractors, took fuel to the men, and many a time went out and helped them, and put on a shift and again in the evening went out at four o'clock from here and would plant ten acres of beets, corn, or what it might be, before dark." "Plowed corn, planted corn, planted sugar beets, made hay, run the combine and did all other farm work." R. 134. Sowed wheat, laid tile, covered tile, inoculated and sowed seed, run binder, plowed corn, mowed hay, husked corn, harvested beets, dug beets, drove tractor and team. R. 133 to R. 135.

"I have no foreman, look after that myself. I always contact the men myself." "Don't make a speech." "Court: I asked him, if he understood it as a symbol for foremen and he stated he don't have any." "Mr. Stoller: Don't have a foreman, I instruct my men myself every morning and look after them and work with them." R. 137.

During the seed season he said he "spent most of my time here, and during the off time spent most of my time on the farm, but during the seed season, go around on the farms every morning and check up what the men are doing and what condition the crops and livestock are in." R. 144.

"In the summer we all worked on the farm including myself." Examination by the Supervising Conciliation Commissioner. R. 113, 114.

He worked at the seed house and on the farm in the winter. R. 88. There is little seed business in the summer, it is seasonable. R. 89. Sometimes he looks up the seed business in summer. R. 94.

He helps his hired men, "the first thing I do is to take time to farm." R. 94.

He works at the seed store at nights, and during spare time. R. 110. R. 116.

He threshes and hulls clover seed. R. 90.

So ran the findings of the Supervising Conciliation Commissioner as special master and the testimony of the respondent himself.

We proceed to an examination of the testimony of the other witnesses.

Witness Doster, Farm Hand.

R. 153, R. 154, R. 159, R. 160.

Age 51. Lives on his own farm. Has worked for Mr. Stoller as a farm hand for 17 years.

Year 1939-1940:

Mr. Stoller was on the farm the biggest part of the time and did chores, planted corn, sowed oats, drove the tractor. He left the farms "usually noon or after; sometimes did not come out till evening, out with us most of the time." R. 154.

"Mr. Stoller helped chore on the home farm most of the time."

"He always got up around five o'clock—around in there somewhere. What did he do from then until he came to the Stoller Seed House? Helped around choring and out on the place." R. 154.

"Mike [Mr. Stoller] comes out every morning to do the chores" till they are done. It takes an hour every morning. Sometimes he is out in the evenings, "half the time, anyhow." Cross Examination: R. 156 and 157.

"Did you get your instructions from John [the brother] about planting and things to do? No, sir. Tell you anything to do about the farm at all? No, got our instructions from Mike." Cross examination: R. 157.

". . . During the period of time from 1938 until now did you observe any particular months in the year when Mr. Stoller was on the farm more than in the Seed Store? Not on the farm all the time. Was he at the seed store all the time? No, Mike wasn't. You say he was on the farm all the time? The whole summer. How about the winter? Up till quite a bit, and out there half and half. Half and half you say? Yes. Wasn't he at the seed store in the summer? Not to speak of." R. 157 and 158.

"Mike helped plant a lot of corn and oats both." "When you say he helped, do you mean he was out planting corn when you was helping, or John? No, he [we] wasn't all

helping plant corn. When we [he] was planting we was out harrowing. You don't mean you and Mr. Stoller were planting corn together? No, one or the other planted." Cross examination, R. 158-159.

"You and John helped plant oats and say Mike helped with that? Yes. Did you see him plant oats? Yes. Sure of it? Yes. Do you know if he did a good job or not? Sure." Cross examination, R. 159.

"Tell what he [Stoller] did? Well, he milked and he helped feed the horses and cows and hogs and everything." Direct examination, R. 159.

In 1939 he kept 22 head of steers on the Huber farm. Direct examination, R. 160.

Witness Leo De Latt, Farm Owner.

R. 161, R. 163, R. 165.

Has known Stoller over 25 years. The witness owns his farm located near the Stoller "Home Farm". Has seen him work on the farm, principally in the spring and through harvest. Direct examination, R. 161 and 162.

He has gone to the seed house on various occasions and Mr. Stoller was not there. "Well, generally didn't find him . . . I called the farm and found him there." Talked to him there by phone. "Well, I called him a lot of times [at the seed house] and nobody was there, suppose, could not get an answer." "Tell the court if you usually came to the seed house and found no one here? I have." "I was on business." Direct examination, R. 163.

Since January the witness has been at the seed house three or four times and three or four times back in 1939. "Well, I would say he [Stoller] spent most of his time on the farm during the day, have arranged to meet him

here in the evening." Cross examination, R. 163 and 164.

"You haven't seen him working on the farm? Yes, I have." "How many times? Went there three times, was driving horses on the hay rack." "Think that was in July, went to see him about threshing." "Another time he was feeding cattle." in October. "Once, in the Spring, don't know when, that was about sowing time." Cross examination, R. 164.

"Done business at the store at night? Yes. Done business at the store in day time? Not with him." Cross examination, R. 165.

When the witness came to the seed house it was "generally bad days." He picked those particular days "because I had the time and figured Mike had it." "Tell the court whether those days were fit to work on the farm? Not on the ground." Direct examination, R. 166.

Witness Gehau. Worker in seed store.

R. 169, R. 170.

State of Mr. Stoller was present every day in the Stoller Seed House? "No, about half the time, maybe not half."

When Mr. Stoller was located by the witness, it was usually "At the farm."

"I was supposed to work from 8:30 to 5 and had to wait until Mike got here at 10:30 to open up, sometimes in the afternoon, whenever he got here, and when he finished his work at the farm or got pretty well finished with it." "As I said before sometimes 10:30, just whatever time he would run up here, and he would open up and then he would leave and go back and finish his work, and then he would come back." Direct examination, R. 169, R. 170.

"Mr. Stoller worked some of those nights? We worked at nights because he could not be all day." Cross examination, R. 170.

Witness Bidlock, Sugar Company Manager.

R. 172, R. 174, R. 177.

Saw Mr. Stoller doing farm work on the various farms several times when on inspection trips as company manager to the Stoller farms or part them.

In 1939 "he farmed the farm belonging to the Sugar Company and the Huber Farm and the home farm and the other two farms in Latty Township." In 1938 farmed the same land and also the Dittenhaver farm of over 200 acres.

"Referring particularly to this Michael G. Stoller farm I ask you if any of the hand labor was performed by the children of Michael G. Stoller? There has been a part of it performed by his family." Direct examination, R. 172.

Witness Jack DeLaet, Farm Hand.

R. 178, R. 179.

In 1939 "I fed, he had 160 head of steers, I fed those, and shocked corn and hauled beets and everything there was to do on the farm."

Mr. Stoller "done the work in the morning and helped load beets when I hauled them, and put up a new building and helped put the building up." Mr. Stoller did not spend all his time there. "No, he did not spend it all there, but gave me orders what to do." He would leave the farm "around eleven o'clock, generally in the morning, and sometimes would come back in the afternoon."

"What time did Mr. Stoller usually get up in the morning? I always got there around 5:30 or 6 o'clock and he was up then. What was he doing? In the barn doing chores." Direct examination, R. 178, R. 179.

The Evidence Conclusively Proves that the Respondent Is a Farmer.

The special master in his report in summing up the evidence on this subject said:

"It is apparent from these facts that the debtor was 'bona fide personally engaged in producing products of the soil' and 'the producing of . . . livestock products in their unmanufactured state.'

The remaining question under this portion of the definition is whether or not the debtor was "primarily' so engaged.

Webster's New International Dictionary, Second Edition, defines the word as follows: 'Primarily: In the first place, originally; pre-eminently; fundamentally; as, an action primarily based on policy.'

The debtor resided on the largest of his farms with his family. Regular operations about the farms were his first concern in the mornings. He did not go to his seed business until he had performed some farm work and had arranged for and given instructions as to the farm work to be done thereafter. The employees of his seed business were required to await his arrival. They were unable to enter the office until he did arrive. It must be found that his first or primary interest was in his farms and the farming operations. That being so, he falls within the group included within the first portion of Section 75 (r)."

By every test applied to the evidence the respondent is a farmer. He gives his farming first place in his time and in his attention. He is a skillful farmer. By the first

part of the statutory definition he is a farmer because he is primarily bona fide personally engaged in producing products of the soil and in the production of livestock.

Income.

The farming operations of the respondent were financially remunerative. His seed business was a failure and was a constant drain on the farm profits. No farm creditor pressed him but the seed business brought him down.

The Special Master's conclusion on the cause of Mr. Stoller's financial difficulties were that:

"He was in financial difficulty, not because of nor through his farming operations but through his seed business operations. **His farming operations resulted in a net profit and his seed business operations in a net loss.** It must be found that the principal part of the debtor's income was derived from producing products of the soil and the production of livestock and livestock products in their unmanufactured state." R. 57.

The witnesses for the banks testified that the loans were necessary on account of the seed business. Carlton, R. 94. Burdick, R. 106, R. 218.

The bankers called for a financial statement of the seed business. Carlton, R. 95. They do not make farm loans. R. 97. They did not loan on the land but on the seed business. F. 99. Burdick, R. 105. They sent bank men down to look at only the seed business. R. 99. Burdick, R. 101, R. 102, R. 103.

Witness Burdick, vice president for one of the petitioners, the Cleveland Trust Company, testified: "We

knew he was a farmer, knew he lived on a farm" . . .
 R. 102. Report of special master, R. 602, middle of page.
 This bank official knew that he was recognized to be one
 of the leading farmers in the community, "Brady Brothers
 and Mike Stoller." R. 105. The bankers were taken
 to the farms. R. 92, middle of page. R. 104, bottom of
 page.

Declines in seed prices precipitated the loans from
 he banks.

The Losses in the Seed Business.

Debtor's Exhibit D-1 Market Quotation November 16,
 1939, R. 149 to 152.

Debtor's Exhibit D-2 Market Quotation November 1,
 1940, R. 149 to R. 152.

The loss for the year 1939-1940 was \$13,725.97 and was
 due to seed market declines. R. 149 to R. 152.

Examples of declines: alfalfa, declined 5c per pound;
 alsac, 9c; blue grass, 9c; red clover, 7c; sweet clover, 2c.

The finding of the Special Master on the subject of income
 from the seed business in 1940 is as follows:

"It is not possible to determine accurate figures for
 the income or less resulting from the seed business
 operations for the same period of time ending November
 1, 1940. The figures compiled by the debtor and
 set forth in movants' exhibit 25, admittedly are not
 complete. The bankrupt testified that they are as accurate
 as he could make them. Such figures disclose
 a net loss of \$13,725.97.

There is no testimony nor evidence in the record which would tend to show that any profit or net income was realized from the seed business operations." R. 55.

He lost money in the total farm and seed business, about \$15,000 in 1938, and made some money in 1939. The loss was in the seed business. R. 94. And not from the farm operations. R. 95. According to values in 1939 he made about \$16,000 in 1939 from farms and seeds. The farm income that year about \$28,000. R. 91.

The two years of 1938-1939 combined were a loss. R. 95.

The farm operation net profits in 1940 were over \$8,000. R. 143. This was in addition to \$327.04 on the 80 acre farm and \$246.64 on the 40 acre farm. R. 145 and 146. Thus the total net profit from the three farms was \$8614.89 in 1940.

The conclusion of the Special Master as to the net farm profits for 1940 is summarized thus:

"The details of the debtor's farm income for the year of 1940, shown in Exhibit 15, appear to be reasonably adequate for the purpose. Movants' witness, Clifford E. Leitner, a certified public accountant, testified as to certain inadequacies therein such as the allocation of items of farm labor to the farms and to the seed business. Nevertheless, on the basis of figures found and to a great extent undisputed, the 1940 net income of the debtor from his farms was in the approximate amount of \$6,000.00. The figures for the grain produced were fixed as of the dates of harvest or entry. The testimony was to the effect that the prices of grains had risen thereafter but no attempt was made to include such price gains in the income."

The losses in the seed business for 1940 are summarized by the Special Master at R. 29 and R. 55.

It is equally clear that the respondent's operations as a farmer were financially successful while as a seedsman he operated it at a loss. That is, his "principal income" came from farming—in fact his only income came from it.

The Decisions.

The supervising conciliation commissioner in his special master's report cited and discussed thirty-one decisions. In all, some of them he considered more than once in their different aspects. R. 31 to 54. The district judge cited and discussed four cases. R. 190. They all were fully analyzed and discussed in the briefs and arguments before the appellate court. As was said by this court in *First National Bank v. Beach*, 1937, 301 U. S. 435, at page 441: when "read with due relation to the facts" the most of them are seen to be consistent with the conclusion of the special master and of the appellate court. The appellate court arrived at the same result, saying: "The authorities cited by the district court present facts far afield from those recorded in the instant case" and took the pains to show why. R. 243 and 244.

The decisions relied upon by the district judge and by the petitioners are here discussed in the order in which each first appears in their brief.

The Decisions Cited by the District Judge Found in the Petitioners' Brief at Page 9, Also in the Record at pages 190 and 191.

So that the different viewpoints of these opinions which were relied upon by the District Judge may be readily

compared the discussion in the "Memorandum of the Court" (R. 190) is first set forth followed by the discussion by the Special Master (R. 24 to 54) and then by the discussion of it by the appellate court (R. 242 to 247). Finally the case is discussed on behalf of the respondent.

i. *First National Bank v. Beach* (1937)
301 U. S. 435.

From the Memorandum of the District Court:

R. 190: "Each case involving the question of whether a debtor in bankruptcy was engaged in farming, so as to entitle him to the benefits that accrue to a farmer under the provisions of Sec. 75 of the Bankruptcy Act, should stand on its own bottom and be determined from the facts and from the record. *First Nat. Bank v. Beach*, 301 U. S. 435."

From the Special Master's Report:

R. 31: "The leading case on the question of who is a 'farmer' appears to be *First National Bank v. Beach*, 301 U. S. 435; decided May 17, 1937.

In that matter, the debtor owned a farm with 5 houses and a barn thereon. He had lived on such farm since his birth, occupying one of the houses with his family. Debtor had been engaged in business prior to 1930, but had suffered financial losses. At that time he began working the farms again. He had harvested fruit from an orchard and some isolated trees and cultivated a large garden of about one acre, raising vegetables thereon. He raised hay and sold it; repaired the houses, cleaned out a well, laid several miles of stone walls and built 2 miles of barbed wire fence; he also had a few animals and a miscellaneous assortment of farm tools. He raised a considerable amount of poultry and eggs.

His total income per annum from 1930 to 1935, was \$4,000, of which amount \$2200.00 was derived from renting three-quarters of the farm to various persons for grazing and cultivation.

Rentals from other real estate, not claimed to be farm property, amounting to \$1500.00 made up the principal part of the remainder of his income.

The District Court held that the debtor was not a farmer within the meaning of Section 75 (r), and the Circuit Court of Appeals reversed.

The Supreme Court stated the question to be simply: 'Was respondent a farmer because "personally bona fide engaged primarily in farming operations" or because "the principal part of his income was derived from farming operations"?'

It is stated in the opinion:

'We do not try to fix the meaning of either of the two branches of this definition, considered in the abstract. The two are not equivalents. They were used by way of contrast. Occasions must have been in view when the receipt of income derived from farming operations would make a farmer out of some one who personally or primarily was engaged in different activities. A catalogue of such occasions might err for excess or for defect if made up in advance. . . . The words "primarily engaged", as we find them in the first branch of the definition, do not constitute a term of art. The words "income derived from farming operations" do not constitute such a term. In every case the totality of the facts is to be considered and appraised. We pass to that appraisal here.'

' . . . The farming and the leasing must be viewed in combination if we are to gain a true perspective, the two tied together as principal and incident. A single tract of land belonging to the debtor has been worked by him in part, and in part worked by others to whom a section

of the tract has been let for cultivation. Far from stepping into another business, he has been faithful to the old one in thus dividing up the tillage. To get a living out of the land in one way or another is the thread of common purpose that binds the labor and the leases, and enables us to find in them the tokens of the same vocation. In brief the man is seen to be a farmer by every test of common speech, though his income has been garnered in rents as well as products. We emphasize the fact afresh that the words of the statute to which meaning is to be given are not phrases of art with a changeless connotation. They have a color and a content that may vary with the setting. . . . In the setting of this enterprise, the totality of its circumstances, the roots of the respondent's income go down into the soil.' "

From the opinion of the appellate court:

R. 247: "The Supreme Court, in *First National Bank v. Beach*, 301 U. S. 435, 438, 439, has declared that, in determining in every case of this character whether the petitioner is a farmer because 'personally bona fide engaged primarily in farming operations' or because 'the principal part of his income was derived from farming operations,' the totality of the facts must be considered and appraised. The Supreme Court would not attempt to fix the meaning of either of the two branches of the definition considered in the abstract, saying that the two are not equivalents but are used by way of contrast. The words 'primarily engaged' in the first branch of the definition, and the words 'income derived from farming operations' in the second, were said not to constitute terms of art. Mr. Justice Cordozo wrote: 'A farmer remains a farmer, just as a lawyer remains a lawyer, though the returns on his investments, while not enough to

keep him going, are larger, none the less, than the profits of his labor. . . . We emphasize the fact afresh that the words of the statute to which meaning is to be given are not phrases of art with a changeless connotation. They have a color and a content that may vary with the setting. (Citing cases.) In the setting of this enterprise, the totality of its circumstances, the roots of respondent's income go down into the soil.'

So, in the setting of the case here for decision and the totality of its circumstances, the roots of appellant's income would seem to go down into the soil. He is, therefore, entitled in full measure to the relief provided by the Act of Congress of May 15, 1935, C. 114, Sec. 3, 49 Stat. 246, 11 U.S.C.A., Sec. 203(r)."

DISCUSSION:

With the statement in the Memorandum of the District Court there is full agreement. The significance of the decision in the *Beach* case in its application to the question in this appeal, lies elsewhere. The Special Master aptly develops two other points.

(1) The debtor Beach had been a merchant for many years and in that occupation he acquired a total debt of \$100,000 and retired to do the best that he could on his farm homestead. **His debts arose entirely out of his business venture.** This fact which the opinion of the Supreme Court specially noticed was ignored in its discussion of the sole question to be decided, namely, was Beach a "farmer"?

In contrast the Memorandum of the District Court in this *Stoller* case lays special stress upon the similar fact in this respondent's case, with which fact all agree. The Memorandum of the Court says:

. . . "I am further convinced that the substantial portion of his indebtedness that brought him to the bar of the bankruptcy court was incurred in the operation of that seed business."

(2) As pointed out by the Special Master in the quotation from R. 52, the petitioners argued that in so far as the appellant laid and repaired tile ditches, repaired farm buildings and fences, and built new buildings, he was not farming. In the same vein it was argued that in cleaning out a well, laying stone walls, building fence and hauling stone, Mr. Beach was not farming. But this Court concluded that he was.

Likewise Mr. Stoller's activities "smacked of the soil, and made him not less, but more a farmer." He was bred a farmer. He has farmed all his life. Arising at five o'clock in the morning, milking cows, feeding steers, doing chores, until eleven before going to the seed store—on those days when he went at all—he undoubtedly smacked loudly of the soil when he arrived. "The roots of his income go down into the soil." He went broke in the seed business and had to borrow solely on account of the seed business. At every turn of the evidence covering many years we see profitable farming operations. The farm profits kept the seed business afloat until it carried all down with it.

Tiling, repairing fences, building a cattle barn, repairing tractors and other farm machinery, hauling fuel and oil to the fields, feeding cattle, threshing, combining, hulling clover, cleaning seed—all are "farming," all are producing products of the soil equally with planting, hoeing, cutting and husking and cribbing corn.

Likewise just as Mr. Beach raised chickens and kept a garden, so Mr. Stoller raised hogs and cattle, milked cows, fed cattle, made hay, sowed wheat, laid tile, covered tile,

inoculated, cleaned and sowed seed, ran the binder, ran a threshing machine, plowed corn, mowed hay, husked corn, harvested beets, dug beets, drove the tractor and team, planted corn, planted sugar beets, and ran the combine.

Clearly Mr. Stoller "smacks of the soil" and the "roots of his income go down into the soil."

- ii. *Beamesderfer v. First National Bank* (1937)
(CCA 3), 91 Fed. (2d) 491.

From the Memorandum of the Court:

R. 190: "I have concluded that Michael Stoller was basically, fundamentally and primarily engaged in the wholesale and retail seed business; that his interests lay there; that his energies and attention were primarily devoted there; and that instead of being personally engaged in the business of farming he was personally engaged in the seed business. I am further of the opinion from the record that the principal income that accrued to Michael Stoller during a period of years prior to the filing of his petition in bankruptcy was derived from the seed business, and I am further convinced that the substantial portion of his indebtedness that brought him to the bar of the bankruptcy court was incurred in the operation of that seed business. *Beamesderfer v. First Nat. Bank & Trust Co.*, (CCA 3d, 1937) 91 F. (2d) 491."

From the Special Master's Report:

R. 34: "The case of *Beamesderfer v. First Nat. Bank & Trust Co. of Mount Joy*, 91 F. (2d) 491, was decided by the Circuit Court of Appeals, 3rd Cir. on July 13, 1937.

The Court recited therein the following facts. From

1912 until the date of the filing of the petition on January 7, 1935, the debtor and his wife lived in Mount Joy, Pa. They had a farm in another county. The debtor was not a farmer; had not cultivated the farm, but had rented it to a tenant. During the 5 years prior to the decision, the farm had not been cultivated by anybody but had been used for pasture and during part of that time by another than the debtor. He also owned a tobacco ware house and was engaged in buying and selling leaf tobacco over a period of 15 years prior to the filing of the petition. He borrowed large sums of money for use in the tobacco business and his indebtedness arose out of his tobacco operations. Practically all of his income was derived from the tobacco business."

In its discussion of this decision the appellate court said:

R. 243. "The authorities cited by the district court present facts far afield from those recorded in the instant case. *Beamesderfer v. First National Bank & Trust Co.*, *supra*, disclosed a situation where the petitioner did not live on his farm but had rented it out. The farm had not been cultivated for five years, but had been used only for pasture. The petitioner owned a tobacco warehouse in the town of his residence, and his occupation for fifteen years had been buying and selling leaf tobacco. Practically all of his income had been derived from the tobacco business. He was properly adjudged not to be a farmer entitled to the benefit of the Agricultural Composition and Extension Act."

DISCUSSION:

The last paragraph of the *Beamesderfer* opinion reads thus:

"The uncontradicted testimony established that from 1912 until the date of filing the petition in this case, January 7, 1935, Beamesderfer and his wife lived in Mount Joy, Lancaster County, Pa., but that they had a farm in Londonderry Township in Dauphin County, Pa.; that he was not a farmer, had not cultivated the farm but had rented it to a tenant; and that during the last five years it had not been cultivated by anybody but had been used for pasture, and during part of that time by another than Beamesderfer, one Nicholas B. Garver. The testimony further shows that Beamesderfer owned a tobacco warehouse in the borough of Mount Joy and was engaged in buying and selling leaf tobacco over a period of fifteen years prior to filing the petition in this case; that he borrowed large sums of money for use in his tobacco business and that his indebtedness arises out of his tobacco operations; that practically all of his income was derived from the tobacco business. Under these circumstances the conciliation commissioner found that neither Beamesderfer nor his wife, the appellant, was primarily *bona fide* engaged in producing products of the soil and that the principal part of their income was not derived from farming operations. Under these circumstances, the District Court did not err in refusing to refer the case back to the conciliation commissioner and in dismissing the petition."

The facts which separate the *Beamesderfer* case from this *Stoller* case are:

1. Beamesderfers did not live on the farm. For 13 years they had lived in another county. Mr. Stoller has lived on a farm all his life, since 5 years old.
2. Beamesderfers did not farm their land but rented it to a tenant. Mr. Stoller has always farmed with his own hands.
3. The Beamesderfers had not cultivated any land at

all for the preceding five years. Mr. Stoller has cultivated land every year.

4. At his residence in a county distant from the farm, Mr. Beamesderfer had been in the business of buying and selling tobacco for the past fifteen years. Mr. Stoller has always lived on a farm and conducted his seed business in the village.

5. Practically all of the Beamesderfer income came from the tobacco business. All of the Stoller income came from farming. The seed business took it all in and demanded more, thus dragging the farm operations into the farmer debtor proceeding.

6. The single element which is common to the two cases is that the debts arose out of the businesses. This is immaterial as we have seen in *First National Bank v. Beach*, 301 U. S. 435, where the indebtedness of \$100,000 arose out of mercantile business. The sources of the debts are immaterial. The statute reads: "A petition may be filed by any farmer, stating that the farmer is insolvent or unable to meet his debts as they mature." Sec. 75 (c). It is the possibility of the farmer debtor losing his land because he can not pay his debts, any debts, as they mature that gives the court jurisdiction of a farmer debtor's case. The rock bottom purpose in Section 75 is to prevent the creation of an European peasantry in our country. Farm ownership by farmers is essential to a strong democracy. As this Court said in *Home Building and Loan v. Blaisdell*, 290 U. S. 398, at page 445:

"Also important is the fact that mortgagees, as is shown by official reports of which we may take notice, are predominantly corporations, such as insurance companies, banks, and investment and mortgage companies. These, and such individual mortgagees as are

small investors, are not seeking homes or the opportunity to engage in farming."

The interest of the nation requires that farmers be kept on the farm as farm owners.

iii. *Baxter v. Savings Bank*, (1937)
(CCA 5) 92 Fed. (2d) 404.

From the Memorandum of the Court:

R. 190: "It is apparent from the record that the farmer debtor exercised supervision over the farm operations in that he was in the habit of giving directions to his foreman and workman on the farm, especially in the mornings before proceeding to the conduct of his seed business. But supervision or property management is not sufficient to entitle one to the benefits of this section. *Baxter v. Savings Bank of Utica* (CCA 5th, 1937) 92 F. (2d) 404."

From the Special Master's Report:

R. 33: "In the case of *Baxter v. Savings Bank of Utica*, N. Y., 92 F. (2d) 404 (CCA 5th Cir.) decided on October 18, 1937, adjudication was set aside for the reason that the debtor was not a 'farmer' within the meaning of the Bankruptcy Act relating to agricultural compositions.

The bankrupt had resided in Utica, N. Y. and had practiced law for a number of years prior to February, 1935, when he moved to Georgia. In October of that year, he filed a petition under Section 75. It was found that farm property constituted only a small part of his estate, and potential income from his farming operations was very small as compared with that of his other property.

The evidence disclosed that the debtor gave up his law practice because of his health and he had already acquired the farm property. Thereafter, he devoted his entire time to the management thereof which included the superintendence of the farming operations.

The court said on page 406:

'While it is true that appellant may have performed some of the functions of a farmer, his occupation may be more accurately described as property management. The evidence amply sustained the conclusion of the court that appellant was not a farmer within the meaning of the act (section 75 (r), as amended 11 U.S.C.A. Sec. 203 (r)).'

The appellate court said:

R. 244: "*Baxter v. Savings Bank of Utica, N. Y., supra* is of doubtful authority, in the light of the opinion of the Supreme Court in *John Hancock Mutual Life Insurance Co. v. Bartels*, 308 U. S. 180; but, however this may be, its factual situation bears no relevant resemblance to the instant justiciable controversy. The petitioner, Baxter, who was denied the benefits of a farmer debtor status, was a Utica, New York, lawyer, who, eight months before filing his petition, had given up his law practice and, because of ill health, moved to Georgia, to a farm which he had previously acquired there. During residence on his farm, he merely superintended farming operations. The Court of Appeals probably took judicial notice that the new arrival, as a farmer, was a good lawyer."

DISCUSSION:

By certiorari to the Fifth Circuit (which decided the *Baxter* case) the case of *John Hancock v. Bartels*, 308 U. S. 180 came to this court. At page 181 this Court said:

"Because of conflict in the rulings of the Court of Appeals of the Fifth Circuit, due to the differing views of the judges composing the court in the cases cited, and because of the importance of the question, we granted certiorari." Among the "cases cited" was this case of *Baxter v. Savings Bank*, CCA 5, 92 Fed. (2d) 404, and this Court overruled it.

This repudiated Baxter decision will not stand examination. The Fifth Circuit Court there held three things: 1. The petitioner was not a farmer. 2. He had not shown good faith. 3. The bankruptcy court could make him an involuntary farmer bankrupt by adjudication under Section 22 of the regular Bankruptcy Act.

1. The entire evidence on the question of whether the petitioner was a "farmer" the Fifth Circuit Court summed up as follows:

"The evidence discloses that appellant gave up his law practice just prior to moving to Georgia on account of his health; that he had already acquired the property involved; and that thereafter he devoted his entire time to the management thereof, which included the superintendence of the farming operations. While it is true that appellant may have performed some of the functions of a farmer, his occupation may be more accurately described as property management. The evidence amply sustained the conclusion of the court that appellant was not a farmer within the meaning of the Bankruptcy Act, Section 75 (r), 11 U.S.C.A., Section 203 (r). Cf. *In re Day*, (D. C., Ill.), 10 F. Supp. 229."

Whether the mere management of farm operations would debar a farmer debtor petitioner from being a "farmer" by occupation, which is extremely doubtful (since **even a corporation**—which can not dig in the soil except vicariously by "management" **may** by statute, 75 (s) 4, **be a**

"farmer") that subject is not in this Stoller case. Mr. Stoller was not a mere farm superintendent, he worked every day with his hands.

2. On the point in issue here the Baxter decision is but a puff of air, a side issue. The soul and center of the Baxter decision was that a farmer debtor proceeding may be dismissed, or transferred to regular bankruptcy, for alleged lack of "good faith." This Court held in the *Bartels* case that good faith has nothing to do with filing a farmer debtor petition or making a proposal under it.

3. The holding that after dismissing a farmer debtor petition under Section 75 the court could transfer the proceeding into regular bankruptcy is a direct violation of the statutory prohibition against an involuntary bankruptcy adjudication of a farmer. The petitioner Baxter never subjected himself to any jurisdiction in bankruptcy except under Section 75 and he was not a petitioner for voluntary adjudication in bankruptcy. No involuntary petition had been filed.

The Baxter decision warrants no further discussion. It is inherently a nullity as a precedent.

iv. *In re Day* (D. C. Ill.), (1935)
10 Fed. Supp. 229.

From the Memorandum of the Court:

R. 191: "It is also apparent that in the off season when his time and attention was not wholly concerned with the seed business he devoted more time to his farm, but there is very little in the record to indicate that he was personally engaged in farming or that he was basically and fundamentally a farmer and

that this industry was his primary vocation. *In re Day*, (D. C. Ill. 1935), 10 F. Supp. 229."

From the Special Master's Report:

R. 41 and 42: "*In re Day, et al., In re Day's Estate*, 10 F. Supp. 229, decided by the District Court, E. D. Illinois, on March 8, 1935, set forth that the debtor from 1920 to the date of his death in October 1932, was superintendent of highways and county surveyor. He was a civil engineer by profession, maintained a civil engineering office, and in addition to his public work, did engineering work. He owned 320 acres of farm land but did not live thereon. He lived in a village where he had an engineering office. His farm from 1929 until his death, was occupied by a tenant on a crop rental arrangement. The court concluded that the income from the farm and from the engineering profession earnings were approximately the same.

The court said therein:

' . . . Surely in that situation it cannot be said that he was personally primarily engaged in farming. Primarily means basically or in such manner as to be of first importance. Here the connection with farming as such was incidental to looking after an investment and did not have to do with his basic employment.

Nor was he within the second definition of the act, one "the principal part of whose income is derived from farming operations." Principal means main, chief, of first importance. The showing made in this respect falls far short of sustaining the allegation bringing him within such language.' "

In its opinion the appellate court said of this decision:

R. 244: "*In re Day, supra*, was a case where the petitioner held not to be a farmer was a practicing civil engineer, and also superintendent and county

surveyor, who owned but did not live upon a farm which he rented to a tenant who occupied and cultivated it. The civil engineer devoted his time almost exclusively to the practice of his profession, and derived his income about equally from his profession and his farm."

DISCUSSION:

There can be no quarrel with the decision of Judge Lindley upon the facts as stated in his Day opinion. They were:

"The deceased from the year 1920, until the time of his death in October, 1932, was superintendent of highways and county surveyor for the county of Piatt. He was a civil engineer by profession, maintained a civil engineering office, and, in addition to his public employment as superintendent of the highways and county surveyor, was engaged during substantially all the remainder of his time in performing for compensation services as a civil engineer for drainage districts and private parties. He owned 320 acres of land, subject to mortgage indebtedness. He did not live upon the farm, but lived in the village of Bement, and divided his time between his office there and the courthouse at Monticello, the county seat of Piatt county. The farm, from 1929 until his death, was occupied by a tenant, who paid crop rental to the deceased.

"The court has labored with the books of the account, examined the same, drawn his own conclusions, and observed carefully the calculations submitted by the respective parties. My conclusion is that the income from the farm and from the engineering profession earnings were approximately the same.

"His time was given almost exclusively to the practice of his profession, out of which he had a substantial income, probably at least one-half of his total income. He did not live upon the farm. At the most,

he only conversed and consulted with the tenant as to crops, harvests, repairs, and sales. Surely in that situation it cannot be said that he was personally primarily engaged in farming. Primarily means basically or in such a manner as to be of first importance. Here the connection with farming was such as was incidental to looking after an investment and did not have to do with his basic employment.

Nor was he within the second definition of the act, one 'the principal part of whose income is derived from farming operations.' Principal means main, chief, of first importance. The showing made in this respect falls far short of sustaining an allegation bringing him within such language."

Although some expressions in Judge Lindley's opinion may not accord with the opinion of this Court two years later in *First National Bank v. Beach* (1937), 301 U. S. 435, it would seem that by the *Beach* decision, the facts in the *Day* case would not satisfy the definition in Section 75 (r).

When the facts in the *Day* case and in this *Stoller* case are compared, however, they lie far apart:

1. Mr. Day was a civil engineer by profession; he was state superintendent of highways and also county surveyor; he was civil engineer for drainage districts and for other clients. Mr. Stoller was from boyhood a farmer and his seed business grew out of his farm operations of tillage and harvesting; his first daily work beginning at the early hour of five was on his farms and the seed store remained closed until he appeared on the scene as late as eleven, or not at all; he often returned to his farm work before the day was over; he worked on the farm in the evenings.

2. Mr. Day did not live on his farm but in town where

he had his office, and he had another office in the county seat. Mr. Stoller has always resided on a farm.

3. Mr. Day's farm was occupied by a tenant who farmed it on shares. Mr. Stoller not only farmed all the land he owned (except 40 acres rented to Mr. Laukhuff, R. 167), but he rented large acreages which he farmed in addition to his own land.

4. Mr. Day's income came equally from his profession and from his share of the crops. Mr. Stoller's entire income came from his farming; his seed business went into the hole and drew his farm income in with it. To keep his farming operations going he was compelled to stop the sheriff's sale which followed the execution issued out of the cognovit judgment on the appellee's unsecured note given to keep the seed business going. No judgment or foreclosure was sought by any debt growing out of farm operations.

5. When well enough to do it Mr. Day advised with his farm tenant. Mr. Stoller habitually worked on the farms with his hands and he directed his employees every day about the farm work.

Judge Lindley had some difficulty reaching the conclusion that Mr. Day was not a "farmer." It was not easy to determine whether farming or profession produced the most income. The question of employment was easy to decide. The facts in the Stoller record make the conclusion inevitable that both his occupation and the source of his income make him a "farmer."

The Other Decisions Relied Upon by the Petitioners.

Page 24 of the Petitioners' Brief.

In re Knight (1934), 9 Fed. Supp. 502.

This old "horse and buggy" decision of a District Court of Connecticut was rendered in 1934 before the import of Section 75 was understood, and before it had been expanded by the Act of May 15, 1935. It was overruled by this Court in *First National Bank v. Beach* (1937), 301 U. S. 435, at 439, where the opinion says that:

"The scantiness of the yield may have turned him into a bankrupt, but it did not change his occupation.

One does not cease to be a farmer because draught or wind or pest may have rendered the farm barren."

The Connecticut District Court opinion disregards that part of Section 75 (r) which makes one a "farmer" who is engaged in farming or producing livestock or dairy products, even though he should have no income whatsoever or should have a greater income from a nonagricultural source.

Page 24 of the Petitioners' Brief.

In re Hilliker (1935), 9 Fed. Supp. 948.

This is another early decision on the definition of a farmer in Section 75 (r) which was rendered before that definition was expanded by the Act of May 15, 1935. It was based, in part, upon the decision in the case of *In re Palma Brothers* (1934), 8 F. Supp. 920, which adverse decision this court noted was one of the reasons why the

Congress expanded the definition in Section 75 (r). See *First National Bank v. Beach* (1937), 301 U. S. 435, at the top of page 438. This *Hilliker* opinion was also grounded upon the then prevalent theory that a farmer debtor proceeding could be dismissed for lack of "good faith". It observed that:

"The proposal on its face bordered on the posteros and it may well be that the debtor had no idea when he made the offer that any creditor would think for a moment of giving acceptance to it. It hardly need be stated that the proposition was rejected."

That theory was advanced and repudiated by this court in *John Hancock v. Bartels*, (1939), 308 U. S. 180.

On the subject of the definition of a "farmer" in Section 75 (r) the district court in the *Hilliker* case found that:

"The debtor has never personally lived on the ranch property, but has lived on a town lot in a suburban city. He is a professional man by occupation, regularly following the business of a dentist. The cultivation of the forty-acre ranch is and has been without doubt a mere incident with other business ventures of the bankrupt, to the following of his professional calling. **The mere fact that the gross amount of income from the ranch property during the past three years happens to be a few hundred dollars in excess of the income of the debtor from other sources, does not, to my mind, determine the question at all.** A man under the definition must be primarily a farmer. Here he is primarily a dentist, regularly working at a regularly kept office, in that profession."

Thus we see that instead of holding "that the word 'income' means the gross income" as suggested by the petitioners in their brief at page 24, the district court in the *Hilliker* case expressly declined to follow such a rule.

Pages 25 to 30 of Petitioners' Brief

First National Bank v. Beach (1937), 301 U. S. 435;

Beamesderfer v. First National Bank and Trust Company (1937), 91 Fed. (2d) 491;

In re Day (1935), 10 Fed. Supp. 229.

These three decisions have been discussed in this brief at pages 32, 37 and 44 respectively.

This concludes the discussion of all the decisions relied upon by the petitioners. It would seem that the statement of the appellate court that they "present facts far afield from those recorded in the instant case" is applicable to each of them.

"Fraudulent Conduct"

On page 32 of the petitioners' brief the following question is posed:

"May the conduct of a farmer debtor in respect to representing himself to be primarily engaged in business enterprise and fraudulently soliciting and obtaining credit upon such conduct and misrepresentations be such as to estop him from claiming the benefits of the Act?"

This implied imputation of fraudulent conduct or misrepresentation has been repeatedly put forth below beginning with the inception of the petitioners' motion to dis-

miss. It was disregarded by the supervising conciliation commissioner as special master, by the district judge, and by the appellate court. It was so disregarded because there is nothing in the record to support it. If there were, the subject has been fully discussed and determined against the contentions of the petitioners in *In re Feil* (1942), 40 F. Supp. 108, by Judge Schwellenbach, a former U. S. Senator who was a member of the Congresses which considered at different times the enactment or amendment of various portions of Section 75. It was also considered and the same conclusion was reached by Judge Allred in *In re Lindsay* (1941), 41 Fed. Supp. 948. This case is cited by the petitioners in their petition but not mentioned or discussed elsewhere.

CONCLUSION.

There is no reason for disturbing the conclusion of the appellate court that the respondent is a "farmer" as defined in Section 75 (r). Under either branch of the statutory definition the record impells the conclusion that he is a "farmer". No case has been cited which would suggest a different result.

It is therefore submitted that the petition presents no ground which would justify the exercise by this court of its power to grant a writ of certiorari.

Respectfully submitted,

Lima, Ohio
May 18, 1943

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MAP

IN THE MATTER OF
MICHAEL GEORGE STOLLER, FARMER DEBTOR
CASE NO. 16315, UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO, WESTERN DIVISION, TOLEDO
CASE NO. 9180, UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SHOWING THE LOCATION OF FARMS OPERATED BY STOLLER

OWNERSHIP



FORMER RESIDENCE



FORMER OWNERSHIP



TENANCY

